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TRANSCRIPT OF RECORD

United States Court Of Appeals

TENTH CIRCUIT

No. 5642

JIMMY JAMES BOUZIDEN, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

Appeal From The United States District Court
For The Western District Of Oklahoma

Filed June 3, 1957.

United States Court Of Appeals

TENTH CIRCUIT

No. 5642

JIMMY JAMES BOUZIDEN, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 5642

JIMMY JAMES BOUZIDEN, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

Appellant's Statement Of Points To Be Relied Upon.

The appellant, pursuant to the Rules of this Court, files hereby his statement of points to be relied upon in this appeal, which are as follows:

I. The trial court committed reversible error in overruling the motion for a judgment of acquittal made at the close of all the evidence.

II. The trial court committed reversible error in failing to hold that the local board denied appellant procedural due process of law upon his second appeal by sending a letter to the Appeal Board arguing against appellant's claim for classification as a minister of religion without sending appellant a copy of it or notifying him of its contents.

III. The trial court committed reversible error in failing to hold that the Department of Justice denied appellant a full and fair hearing before the Appeal Board by its first recommendation on the conscientious objector claim during the first appeal by telling the board that it could consider appellant's beliefs in self-defense and theocratic warfare as a basis for denial of the claim which recommendation was not retracted in the second recommendation of the Department to the Appeal Board on the second appeal of the claim.

IV. The trial court committed reversible error in failing to hold that the Department of Justice denied appellant a full and fair hearing before the appeal board in not supplying

him and the appeal board with the full FBI investigative report on appellant's conscientious objector claim so that they could consider and make use of all the favorable evidence in said report in passing on the merits of the conscientious objector claim and weighing the adverse recommendation of the Department of Justice and also in determining whether the resume of the FBI report made by the Department of Justice and supplied to appellant and to the board was full, fair and just.

V. The trial court committed reversible error in failing to hold that the appellant was denied a full and fair hearing by the hearing officer of the Department of Justice on the conscientious objector claim at the time of his oral examination by the officer by misleading the appellant through saying to him that the parking summons received by the defendant and the conviction of his uncle for bootlegging would not be relied upon by the Department of Justice, whereas they were made the basis of his adverse report to the Department and the unfavorable recommendation to the appeal board.

VI. The trial court committed reversible error in failing to hold that the appellant was denied a full and fair hearing in the Department of Justice on his conscientious objector claim because the appellant was not given an opportunity to answer the report of the hearing officer before the final recommendation was made by the Department of Justice to the Appeal Board, which was itself biased, prejudiced and one-sided, constituting a denial of procedural due process of law.

VII. The trial court committed reversible error in failing to hold that the appellant was denied a full and fair hearing before the Appeal Board through the final recommendation to the Appeal Board which contained unfair representations to the Appeal Board and illegal grounds for the denial of the conscientious objector claim and made serious omissions of fact favorable to the appellant, all of which violated the rights of appellant to procedural due process of law for reasons specified in ground VI of the motion for judgment of acquittal.

VIII. The trial court committed reversible error in failing to hold that the appellant was denied the conscientious

objector status without basis in fact, thus making the final I-A Appeal Board classification arbitrary and capricious.

IX. The trial court committed reversible error in holding that the hearing officer of the Department of Justice, Maurice A. Evenson, was privileged from producing his written report of the hearing conducted by him made to the Department of Justice and in excluding the report from the evidence which was shown to be material and relevant to the issues of the case at the time of the exclusion.

X. The trial court committed reversible error in holding that the FBI agent, Edwin Tully, was privileged from producing the full FBI investigative reports of the inquiries conducted by the FBI upon the conscientious objector claim and in excluding them from the evidence when appellant's offer of proof showed that they were material and relevant for the purpose of enabling the trial court to discharge its judicial duty of deciding as a fact whether the Department of Justice denied appellant procedural due process of law and a full and fair hearing before the appeal board in withholding favorable evidence supporting the conscientious objector claim by making an inadequate summary of the full FBI report to appellant and to the Appeal Board, all of which is contrary to the 'fair and just' section of the Act and the Fifth Amendment to the Constitution.

Wherefore, for each and every one of the reasons appearing in the above-specified ten points, this Court should reverse the judgment of the court below and order the appellant acquitted; or, in the alternative, order a new trial in the court below.

Hayden C. Covington
Attorney for Appellant

June 12, 1957.

Filed June 13, 1957.

Bouziden vs. United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Pleas and proceedings before the Honorable Stephen S Chandler, Judge of the United States District Court for the Western District of Oklahoma, presiding in the following entitled cause:

UNITED STATES OF AMERICA, Plaintiff,

vs.

JIMMY JAMES BOUZIDEN, Defendant.

No. 17,704, Criminal.

1] Indictment.

The Grand Jury Charges:

Count I

That Jimmy James Bouziden, being a male person and citizen of the United States, did as a resident of Woods County, Oklahoma, pursuant to the Universal Military Training and Service Act, as amended, duly register and become subject to the jurisdiction of Local Board No. 80, Woods County, Oklahoma, a Selective Service board duly created and established under and by virtue of the provisions of said Act, and the rules and regulations issued thereunder, and did after his said registration file with said board his questionnaire stating, among other things, the classification to which he thought he was entitled and thereafter by due and proper consideration of said Local Board No. 80, Woods County, Oklahoma, the said Jimmy James Bouziden was classified 1-A as defined by the regulations issued pursuant to said Act, thus making him subject to induction into and service in the land or naval forces of the United States for combatant service; that the said Jimmy James Bouziden was by said Local Board notified of his classification in Class 1-A, and was ordered by said board to report for induction on July 24, 1956; that the said Jimmy James Bouziden did report

to the United States Army Recuriting Main Station, Will Rogers Field, Oklahoma City, Oklahoma, in response to said Order to report for induction issued by his Local Board, and did on July 25, 1956 knowingly fail and refuse to perform a
2] duty required of him under the said Act and regulations, in that he knowingly failed and refused to submit to induction into the land or naval forces of the United States for combatant service, with the intent on the part of the said Jimmy James Bouziden to evade service therein; in violation of Section 462, Title 50 U.S.C.A.

Philip R. Douglas,
Assistant United States Attorney

3] A true bill, P. L. Gosselin, Foreman.

Filed in open court this 5th day of March, A. D. 1957, R. Lee Jenkins, Clerk.

4] Motion For Judgment Of Acquittal.

May It Please The Court:

Now comes the defendant and moves the Court for a judgment of acquittal because of the following reasons:

I. The local board and the appeal board both denied the defendant his right to a full and fair hearing upon his claim for exemption as a minister of religion before the appeal board when the local board wrote the board of appeal a letter dated June 2, 1955, making arguments against the claim for exemption and when the appeal board considered the letter on July 9, 1955, and on June 13, 1956, without notifying the defendant of the arguments and statements appearing in said letter or sending him a copy thereof, all of which is a denial of procedural due process of law making invalid the final order to report for induction upon which the indictment is based.

II. The recommendation of the Department of Justice to the appeal board appearing in the file of papers, considered by the appeal board, dated December 4, 1952, contains recommendations and reasons for the denial of the conscientious

5] objector claim which are illegal and make void the appeal board classification of June 13, 1956, since the appeal board was advised to deny the conscientious objector claim because the defendant believed in theocratic warfare and self defense because it nowhere appears in the record that the Department of Justice later retracted such recommendation or that the appeal board did not rely upon such illegal recommendations.

III. The defendant was denied a full and fair hearing before the appeal board when the Department of Justice refused to send the original FBI reports or a photostatic copy of them to the defendant, as requested by the defendant, so that he could check and determine if a full, fair and accurate resume had been supplied to him of the original report and so that the appeal board could see whether it had before it in the resume of the FBI report all of the favorable evidence given to the FBI by witnesses interviewed by the agent or agents in the course of the investigations, which violates procedural due process of law since no showing of danger to the national interest, the administration of justice or to the effective execution of the Act by thus supplying the original FBI report or photostatic copy thereof, as requested by the defendant, was made.

IV. The defendant was denied a full and fair hearing by the hearing officer of the Department of Justice on January 6, 1956, when he failed to give the defendant the original FBI report or photostatic copy thereof as previously requested by the defendant so he could receive the benefits of Section 6 (j) of the Act; and by leading the defendant to believe that the report of the FBI resume on the traffic violations and the past record of his uncle for conviction as a bootlegger would not be relied upon whereas he did rely upon such factors in his report to the Department of Justice.

6] V. The defendant was denied a full and fair hearing in the Department of Justice because (1) the report of the hearing officer was adverse to him and it was sent to the Department of Justice without sending him a copy of it or without giving him a summary of it before the final recommendation was made to the appeal board by the Department of Justice; (2) the report of the hearing officer was biased, prejudicial, one-sided against the registrant and misinterpreted

misrepresented and it omitted important testimony of the defendant given to the hearing officer at the hearing on January 6, 1956, all of which caused the Department of Justice to make a onesided, biased, prejudicial and unfair final recommendation to the appeal board on March 2, 1956, all of which denied the defendant his rights to procedural due process of law under Section 6 (j) of the Act contrary to the Fifth and Sixth Amendments to the Constitution of the United States.

VI. The defendant was denied a full and fair hearing before the appeal board and rights guaranteed to him by Section 6 (j) of the Act through the final recommendation of the Department of Justice to the appeal board which (1) did not refer to and forward to the appeal board, and withheld from the appeal board all of the favorable evidence in the original FBI reports, much of which favorable evidence was omitted, misinterpreted and misrepresented by the Department of Justice in the recommendation to the appeal board; (2) referred to and commented upon the unfavorable report of the hearing officer and adopted the omissions, misinterpretations and misrepresentations of the testimony given by the defendant before the
7] hearing officer on January 6, 1956, and which omissions withheld important evidence from the appeal board; (3) failed to correct the previous illegal recommendation of the Department of Justice dated December 4, 1952, but repeated it in part to the appeal board which omission and commission advised the appeal board to reject the conscientious objector claim because defendant believed in (a) self defense, and (b) theocratic warfare; (4) failed to forward to the appeal board certain documentary evidence submitted by the defendant to the hearing officer, thereby withholding from the appeal board important evidence submitted by the defendant; (5) called attention to the illegal and immoral acts of other persons, appearing in the FBI resume attached to the recommendation, for which the defendant was not responsible and had nothing to do with, which prejudiced the defendant before the appeal board; (6) relied upon traffic offenses and drinking beer as a basis for denial of the conscientious objector claim; (7) illegally referred to the fact that defendant showed lack of Bible knowledge and that he was not a minister and the ministerial activity of the defendant being poor was a basis for a denial of the conscientious objector status; (8) falsely stated to the appeal board that the defendant said at the hearing that he was not against noncombatant military service "as such",

whereas the defendant said and his papers showed he was against noncombatant military service; (9) illegally referred to the conviction of defendant's brother as a basis for a denial of the conscientious objector claim; (10) adopted the illegal and irrelevant and unsupported conclusion of the hearing officer that defendant was not sincere and was not making his conscientious objector claim in good faith because of the "appearance" and "conduct" at the hearing; (11) recommended
7-A] the illegal conclusion that the defendant is not opposed to military training and service "by reason of religious training and belief" without specifying the detailed reasons given by the hearing officer for the conclusion; (12) by incorporation of the FBI resume referred to the belligerent manner and lack of meekness of the defendant when arrested for a traffic violation as a basis for denial of the conscientious objector claim; (13) adopted the illegal and arbitrary action of the hearing officer in telling the defendant that he should only answer questions at the hearing; (14) misrepresented to the appeal board that the defendant was evasive when the defendant answered all questions and was not evasive; (15) misrepresented to the appeal board that the defendant showed a lack of knowledge of the Bible when the hearing officer asked no questions on the Bible whatever; (16) misrepresented to the appeal board that the defendant was not responsive and was evasive on the subject of drinking when the defendant was direct and not evasive on drinking and did not have to be pressed but promptly answered all questions; (17) misrepresented about traffic difficulties and made it appear that defendant lied about not being arrested whereas the defendant never had been arrested in his life even for a traffic violation, and then referred to the ticket that the defendant got parking and for running a stop sign; (18) misrepresented him as being arrested for running a stop sign whereas he never was arrested for that offense, but was only given a ticket; (19) misrepresented that the defendant got parking tickets, which were for violations by others while using his car which he had loaned them; (20) misrepresented that defendant "did not appear to be able to answer the question" about membership; this being answered by the defendant, and falsely stated that the defendant evaded the answer and "had to be pressed"; (21) misrepresented the facts about the
8] immersion of the defendant by indication that "fact and date" could not be verified whereas the defendant told him the month, year and place, but could not

remember the day of the month of baptism, and the hearing officer never pressed for the day of the month when the month was indicated; (22) failed to mention or summarize the testimony given by the defendant's wife at the hearing in behalf of the defendant; (23) gave an erroneous impression about the admission that the card was not transferred until two months ago whereas the defendant explained fully about the Society's regulations on transfer of the card; (24) misrepresented what he said about noncombatant military service because the defendant did not state that he was "not against it as such" but that he was against his performing such service himself but had nothing to do or say about what others did; and (25) by referring to the irrelevant cases of misconduct of other persons through incorporation of the hearing officer's report and the FBI resume and the failing to properly instruct the appeal board that such irrelevant facts should not be considered and could not be considered by the appeal board; all of which 25 illegal omissions and commissions of duty by the Department of Justice in such recommendation made invalid the final order of the local board which supports the indictment.

VII. The denial of the conscientious objector classification by the appeal board on June 13, 1956, was without basis in fact and therefore the final I-A classification was arbitrary and capricious, making void the final order of the local board upon which the indictment is based.

VIII. The appeal board denied the defendant procedural due process of law by failing to specify reasons why it refused to classify the defendant as a conscientious objector.

9] Wherefore, the defendant prays that this Court render and enter a judgment of acquittal for the reasons above stated.

Respectfully submitted,

Hayden C. Covington
Attorney for Defendant

Filed April 24, 1957.

Bouziden vs. United States of America

11] Judgment and Commitment.

On this 17th day of April, 1957 came the attorney for the government and the defendant appeared in person and by Hayden C. Covington, Esq., his attorney

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and the finding of guilty by the Court of the offense of violation of Section 462, Title 50, U.S.C.A. (Refused to submit to induction into the land or naval forces of the United States) as charged in the indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Two (2) years from date of delivery or until defendant is otherwise discharged as provided by law.

It Is Adjudged that execution of sentence be stayed pending appeal, and defendant granted leave to stand on present bond.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Stephen S. Chandler,
United States District Judge.

12] Notice Of Appeal.

Name and address of appellant are: Jimmy James Bouziden, 817 N. E. 31st Street, Oklahoma City, Oklahoma.

Name and address of appellant's attorney are: Hayden

Bouziden vs. United States of America

C. Covington, 124 Columbia Heights, Brooklyn 1, New York.

Offense is a violation of the Universal Military Training and Service Act as amended by refusing to perform a duty required of him in that he failed and refused to submit to induction into the land or naval forces of the United States.

Concise statement of judgment is a judgment committing the appellant to an institution to be designated by the Attorney General for a period of two years.

Defendant-appellant is now at large on bail which has been allowed pending appeal and is not confined in any institution.

I, the above-named defendant-appellant hereby appeal to the United States Court of Appeals for the Tenth Circuit from the above judgment.

Dated: April 19, 1957.

Jimmy James Bouziden
Defendant-appellant

Hayden C. Covington
Attorney for Defendant-Appellant

Filed April 23, 1957.

14] Statement Of Docket Entries.

1. Indictment for violation of Section 462, Title 50, U.S.C.A. (Refusal to submit to induction into the land or naval forces of the United States for combatant service) Returned and filed — March 7, 1957

2. Arraignment with plea of not guilty. (Judge Chandler) — March 15, 1957

3. Trial by the Court, jury waived, evidence heard, oral motion of defendant for acquittal overruled and defendant found guilty,

defendant gives notice of appeal in open Court. (Judge Chandler) April 17, 1957

4. Judgment and sentence, Two (2) years custody of Attorney General from date of delivery; execution stayed pending appeal. (Judge Chandler) April 17, 1957

5. Notice of Appeal, filed April 23, 1957

6. Motion of defendant for judgment of acquittal, Filed April 24, 1957

Dated April 30, 1957.

Attest R. Lee Jenkins
Clerk.

16] Reporter's Transcript Of Proceedings.

* * * * *

22] Mr. Douglas: Now let the record further show that it is stipulated that the defendant Jimmy James Bouziden on the 25th day of July did fail -- 25th day of July, 1956, did fail and refuse to perform a duty required of him under the Selective Service Act in that he refused to submit into induction of the land or naval forces of the United States for combatant services with the intent upon the part of Jimmy James -- Strike that.

Mr. Covington: That's a matter for the Court to decide, the intent.

Let me add that we will stipulate as stated by the United States Attorney that the defendant refused to submit to induction on the date named in the indictment and that the refusal took place here in the City of Oklahoma City in this Western District of Oklahoma.

Mr. Douglas: Let the record further show that the notice was sent to the defendant by Local Board No. 80, Woods County, to report for induction.

Mr. Covington: And in that connection we'll stipulate

23] with the United States Attorney that the original -- rather, the photostatic copy of the draft board file that the Assistant United States District Attorney has now produced here may be received in evidence in its entirety as the Government Exhibit No. 1.

The Court: It will be admitted.

Mr. Covington: And that we are accepting this file on the assurance by the United States Attorney that it has been compared with the original and that it is a true and correct copy of that save and except for the printed booklets that were filed by the defendant which we may ourselves file at a later date, if we think it's necessary.

The Court: All right. If you find that it is not the complete file I will permit you to correct it.

Mr. Covington: We thought we would have the original file here today but we find out that the State Director doesn't have it and it's probably with the local board in Alva but sometime ago this file that the United States Attorney has here today was compared with the original I am informed by the Assistant United States District Attorney and at that time it was considered to be accurate and on that assurance I stipulate that the file may be received in evidence as the Government's Exhibit No. 1.

Mr. Douglas; If it please the Court, at that time the Court had appointed Mr. Coe to represent the defendant. That was the occasion for going over this file.

24] We might stipulate further that at the time this defendant failed to and refused to submit to induction, he was classified 1-A by his board which is Local Board No. 80, Woods County, Oklahoma.

* * * * *

27] RICHARD BOUZIDEN was thereupon called as a witness by the defendant and testified:

Direct Examination by Mr. Covington:

Q. Sit up there in that witness chair. You have got to bear in mind that these two lawyers here have to hear, and the court stenographer must get everything you say and the judge, of all people, has to hear so it means you have to talk louder than you normally do in conversation. Please state your name. A. Richard Bouziden.

Q. Where do you live? A. Colorado Springs.

Q. How old are you? A. Thirty-two.

Q. And are you married or single? A. I'm married.

28] Q. You are the brother to Jimmy James Bouziden, the defendant in this case, aren't you? A. Yes, sir.

Q. When and where was Jimmy James Bouziden born?

A. Jimmy was born in Auburn, California, in 1933.

Q. Now, tell me the name of his mother and father.

A. His father's name is Tom. The mother is Nellie.

Q. Are the father and mother living?

A. No, neither one.

Q. When did they die? A. Mother died in 1936; father in 1937.

Q. Now at that time Jimmy was just a little baby, wasn't he? A. That's right; approximately four years old.

Q. Now who raised you boys -- How many boys were there in this family born to your father and mother?

A. There was four of us.

Q. Name them, the family, the children.

A. There was Delores, the oldest, myself, Tom, Jr., Jimmy, Lorraine is the girl and Amelia.

Q. Who was it that raised you kids after your parents died? A. It was an aunt and uncle.

Q. Who is that? A. Simon Bouziden.

29] Q. Where did Simon live?

A. At Alice, Oklahoma. It was on a farm.

Q. When did you all start living there with your Uncle Simon? A. On -- Oh, in 1937.

Q. The Government's exhibit in this case is the draft board file and the Selective Service System has supplied me a copy of that file. It's in evidence as Government's Exhibit No. 1. I am going to hand you a document here, dated March 2, 1956, which is a report of the Department of Justice to the Chairman of the Appeal Board and ask you whether or not you attented a hearing that was conducted by the Hearing Officer of the Department of Justice that is referred to on Page 2 of this document and continues on over to Page 4 and ask you whether you attended such a hearing that Jimmy Bouziden

had in Pueblo, Colorado, on January the 6th. Did you attend such a hearing? A. Yes.

Q. Now I have handed you that document that I have just identified in the previous question dated March 6, 1956, and I'll ask you to turn to Page 2 and tell me whether or not you have looked at that. I will ask you, have you seen that before? A. Yes.

Q. Did you see it last night when I was working with you
30] on this case? A. That's right.

Q. Now, after looking at that, does that refresh your memory in part or full as to what took place on the occasion of that hearing? A. Yes, it does

Q. Just in your own words, and I won't ask you to guarantee the sequence of what you say happened but I would like to have you according to the best of your recollection tell the judge what was said and done and what happened from the time that hearing started until it ended. First, tell us where the hearing took place and just take it step by step and go right on from the beginning to the end.

The Court: If you people are standing because there are no seats back there you may come inside the rail, either there inside the rail or over here.

Q. (By Mr. Covington) Now you heard the question. Would you proceed to answer it? A. Uh huh. All right, the hearing took place in Pueblo, Colorado. It was in the Post Office Building and Jimmy, his wife and I went there for the hearing and after a brief introduction and then the Hearing Officer told Jimmy that he had some questions he'd like to ask him. He mentioned that Jimmy wasn't on trial but he would like for
him to answer the questions that he had. So he asked
31] Jimmy his name. Told him that, his address, he told him
that he resided on East Saint Vrain in Colorado Springs. And then from there he asked him what congregation he was associated with. Jimmy told him the North Unit Congregation of Jehovah's Witnesses in Colorado Springs and another question as to whether he was a drinker or not and Jimmy said he wasn't, whether he smoked, he said he wasn't and then he asked him whether he had ever been arrested. Jimmy says, "No," he's never been arrested. And then in regard to what you have to do to become one of Jehovah's Witnesses and Jimmy told him it wasn't as the other religious organizations a matter of being -- having a roll but it's by a study of the Scriptures and,

naturally, after you obtain a knowledge of Scriptures then you see your need of being a witness or bearing witness to Jehovah's name and in that respect you become one of Jehovah's Witnesses and then he asked him whether he was -- Well, an objector to military service and Jimmy told him that he was and --

Q. Go ahead. What else was said either by Jimmy or by the Hearing Officer. A. Uh huh. Then in regard to the wars that were fought by the nation of Israel he said that that was a theocratic war because these wars were fought by intervenors of God himself so the Hearing Officer asked him if he would fight in such a war and Jimmy said, "No," that -- He explained that because that the final war would be fought by the Almighty God and, therefore, we wouldn't have a chance to fight it anyhow so, naturally, he wouldn't participate in that kind of war.

Q. What else took place or was said if you recall?

32] A. I don't seem to recall.

Q. Now then, I would like you to turn to Page 2 of that document that I have handed you, looking at the first paragraph or the second paragraph before the fourth line down the Hearing Officer states that Jimmy was evasive. Now I want to ask you whether you were there while he testified in entirety to the Hearing Officer's --

Mr. Douglas: (Interrupting) Now, if it please the Court, if counsel is going to quote from this letter let's quote properly --

Mr. Covington: All right --

Mr. Douglas: (Interrupting and continuing) Let's take the whole sentence.

Q. (By Mr. Covington) I refer you to the second sentence of the second paragraph -- the third sentence, and you have the document there. It reads, "The Hearing Officer observed that the registrant appeared to be evasive and that he seemed to lack a knowledge of the Bible in general." Now tell us what, if any, comments you have to make about anything that is stated in that sentence as to what took place, whether or not he was evasive and whether or not he was tested or made any statement as to his knowledge of the Bible.

33] Mr. Douglas: This calls for a conclusion of the witness which is not competent testimony.

Mr. Covington: May I ask you this --

Mr. Douglas: (Interrupting) All he can tell is what was said and done.

Q. (By Mr. Covington) I have directed your attention to that sentence and I will ask you this: Upon that hearing did Jimmy Bouziden at any time refuse or hesitate or elude the Hearing Officer on any of his questions?

A. No, Jimmy was not evasive. He didn't evade any of the questions, answered all the questions that were asked him.

Q. Now, the next statement there is that he seemed to lack a knowledge of the Bible. Did the Hearing Officer propound any questions as to his knowledge on the Bible?

A. No, he didn't.

Q. Now, the next statement is that he was questioned about his drinking habits -- You see that next sentence there?

A. Yes.

Q. Where it says, "Questioned about his drinking habits," and then it goes on to state, "that when pressed he admitted that he has drunk intoxicating liquors and still drinks
34] beer." Now just tell us what actually was said on that subject. A. Well, he asked if Jimmy was a drinker. Jimmy said, "No," but later on he did say as far as drinking a beer he did but not intoxicating liquor.

Q. Was there anything said about him being a habitual drinker? A. No, except the term was used here whether he was a drinker which would imply an habitual drinker.

Mr. Douglas: Does the defendant intend to show that in this report it shows anyplace that the Hearing Officer stated he was an habitual drinker?

Mr. Covington: I'll get to that in a minute.

Your Honor, I will proceed on. He has answered as far as he can on that so there would be no further questions on that.

Q. (By Mr. Covington) Now I refer you to the next sentence where the statement was made that Jimmy said he had

never been arrested and you have testified that that is what Jimmy said. That is true, isn't it? A. That's right.

Q. Now did any discussion get into the subject of these parking tickets and other traffic violations in Kansas?

A. Yes, sir, there was. Jimmy was questioned on this,
35] this was running a stop light in Pratt, Kansas, and Jimmy said he was issued a ticket for that but he wasn't arrested.

Q. And how about that parking ticket that is mentioned there in Paragraph 2, what discussion took place about that?

A. Well, I remember Jimmy telling the Hearing Officer in regard to this -- to this -- Oh, this fine in Wichita that someone else was driving his car because he had never been issued a ticket and there has been three or four that have driven his car but it was his, issued under his name, that he had the title and, therefore, he was held responsible.

Q. Well, now, the only ticket that he admitted being guilty of before the Hearing Officer was the running of the stop sign, is that right? A. That's right.

Q. But he told the Hearing Officer he wasn't guilty of the parking violation, is that right? A. That's right.

Q. Now, coming down to the next paragraph, you will notice the third sentence or the fourth sentence there where it says, "When questioned as to how one becomes a member of Jehovah's Witnesses," the Hearing Officer stated, "He did not appear to be able to answer the question." Now did such a proceeding take place as to being unable to answer it, was he unable to answer it? A. No; he answered it.

36] Mr. Douglas: Let's read the whole thing.

Q. (By Mr. Covington) "When questioned as to how one becomes a member of Jehovah's Witnesses he did not appear to be able to answer the question, and only when pressed on specific points was he able to respond that he became a member through study of the Bible, attending meetings and that he was baptized in 1942." Now my question is this: Did the Hearing Officer have to press him on when he became a member and then was he unable to tell how he became a member of Jehovah's Witnesses?

Mr. Douglas: May it please the Court, this question calls for this witness to testify as to the Hearing Officer pressing this defendant. That calls for a conclusion which

the witness is not competent to answer.

Mr. Covington: Well, there are conclusions in this document, too, may it please the Court.

The Court: I'll let him answer.

I believe that under the rules of evidence as I understand them I should let him answer.

A. No, Jimmy was not pressed the point. The answer to becoming one of Jehovah's Witnesses is not like the other religions in the world, a matter of being on a roll in a church but it's actually -- It actually means gaining a knowledge of the truth.

Q. Is that what he told the Hearing Officer at that time?

37] A. Yes, sir.

Q. All right, go ahead and tell what took place on this subject because the judge is entitled to know whether or not Jimmy was unable to tell how a man became a member of Jehovah's Witnesses. A. No, he was not unable because Jimmy told him it was by a study of the Scriptures, learning of God's purposes that one becomes a witness to Jehovah or one of Jehovah's Witnesses.

The Court: Did he or did he not state fully, when asked how one becomes a member of the Jehovah's Witnesses.

The Witness: Sir, will you repeat that again?

The Court: Did he or did he not state fully upon being asked how one does become a member of Jehovah's Witnesses?

The Witness: Jimmy told the officer how.

Q. (By Mr. Covington) Did he leave anything out when he told him? Is that all it takes to become a member?

A. There is a matter of then dedicating one life, that is a solemn agreement between him and God and then this is solemnized before witnesses and by water immersion or baptism.

The Court: Did he tell that to the Hearing Officer?

The Witness: That's right.

The Court: Did he tell that voluntarily or in answer to the question or did he have to be pressed to answer it?

38] The Witness: No, he wasn't pressed. Jimmy did -- Times when questions was asked he would ask the Hearing Officer to explain his question a little further.

Q. (By Mr. Covington) Now, the Hearing Officer apparently stated in his report, according to this document on Page 2 there in the eighth line from the bottom and the ninth line from the bottom where it says, "As shown by the resume the fact and the date of registrant's immersion could not be verified." Now at that hearing was Jimmy unable to tell him the fact whether he had been baptized or not?

A. Yes, Jimmy told him he was baptized.

Q. What did Jimmy tell him about the date of his baptism? A. July, 1942, is what he told him.

Q. Did the Hearing Officer ask him for the exact day of the month or the day of the week?

A. Not that I can recollect.

Q. All right. Now you have already told us about the subject of self defense, that the Hearing Officer deals with at the bottom of that page so I will pass that over. Now what, if anything, was said there at the bottom of that page, that last sentence there about this publisher's record card being in Colorado Springs and had not been transferred

39] from Pratt, Kansas, to Colorado Springs until two months before the hearing? A. Yes, that point was brought out as to why Jimmy didn't immediately transfer his card.

Q. What was said? A. Well, Jimmy --

Q. (Interrupting) What did he say in explanation?

A. In explanation Jimmy told him, according to the rules set out by the Watchtower Society unless we are sure we are going to be gone over three months to leave our cards with the congregation that we are originally associated with. So before the three months was up and Jimmy knew he was going to reside in Colorado Springs he transferred his card.

Q. Now then I direct your attention down to the second paragraph in the middle of the page where it says there the Hearing Officer stated that, "He was not against it as such," meaning the non-combatant service. Did Jimmy Bouziden at any time say that he was in favor of non-combatant service as such? A. No, he didn't.

Q. Well, what if anything came up and what was the

discussion on the subject of non-combatant service between Jimmy and the Hearing Officer? A. Well, naturally, Jimmy was asked by the Hearing Officer whether he would participate in non-combatant service and Jimmy told him, "No," he wouldn't.

Q. And what did he tell him the reason was?

40] A. Well, it's because of his -- Jimmy made a comparison there. He made a comparison of God's Kingdom of government and then the government of the world today and Jimmy showed that he held his allegiance to God's Kingdom or government and that he could not support both of them and his stand was for God's government.

Q. Now, then, getting down farther there along in the paragraph there -- Well, that's all there was about the hearing. But now at the bottom of that page and that bottom paragraph there is a paragraph that the Hearing Officer mentions about the evidence that you gave there and he says there he feels -- Quote, "He feels that the registrant is sincere," talking about what you told him, "though registrant must learn more about the Scriptures in connection with his duties as a minister." Now just what, if anything, was said by you on that subject? A. Yes, as I remember what I said then I told him that as far as gaining a knowledge of the Scriptures it wasn't a matter of learning it in one day, that Jimmy as well as the rest of us it was actually over a period of time of devoting our time to the study of the Scriptures that we came to a better knowledge of the Scriptures and that is the point I had in mind there.

Q. It's not what you had in mind; it's what you said.

41] A. Well, that's what I said.

Q. Now then what, if anything, was discussed between you and the Hearing Officer about that sentence there where it says, "He admitted that -- " That's you -- "admitted that he, -- " That's you and Jimmy -- "the registrant drank alcoholic beverages once in a while." What, if anything, was said on that subject? A. Yes, he asked us whether we drank and we told him as far as drinking a beer once in a while we did do that.

Q. Was there any discussion about the Bible reasons for that or the religious reasons of the organization's stand on drinking? A. No.

Q. All right. I believe that's all.

Cross-Examination by Mr. Douglas:

Q. Now, Mr. Bouziden, you and the defendant's wife were present at this hearing with the defendant and the Hearing Officer, is that correct? A. That's right.

Q. You were testifying about these arrests a moment ago and these traffic tickets. Now is it or is it not correct that what actually happened was that he got this ticket for running a stop sign and didn't show up and they put out a warrant to arrest him?

42] A. No, he wasn't issued a warrant.

Q. There is no warrant issued. Do you know that of your own knowledge?

A. That's what he told me. I wasn't there.

Q. You weren't there? A. No.

Q. You weren't living in Pratt, Kansas, with him?

A. No, I wasn't, not at the time.

Q. Or Wichita, Kansas, with him? A. No.

Q. You never lived with him at either one of those places, is that correct? A. That's right.

Q. Did you ever live in Pratt? A. No.

Q. Or Wichita? A. No, but we --

Q. (Interrupting) Did you ever stay there while you were working there for awhile? A. Oh, yes.

Q. At the time you stayed there were you staying with your brother here? A. That's right.

Q. But you don't consider that you lived there?

A. Well, no, I don't consider it living there.

43] Q. Now you stated a moment ago that when the Hearing Officer questioned him as to non-combatant service he stated that he wouldn't do that because of his belief that he could not serve God and serve government at the same time, is that correct? A. That's right.

Q. Did he also state that he couldn't participate because it might interfere with his duties as a minister?

A. Yes, that point was brought out.

Q. You are a member of the Jehovah's Witnesses, are you not, sir? A. That's right.

Q. Are you a minister? A. Yes.

Q. And what grade of ministry are you, or explain to me what different types of hierarchy they have in your church?

A. Well, it's not considered a hierocracy as far as that's concerned, all of Jehovah's Witnesses and the congregation are all ministers but we do have the congregation servant who oversees the affairs.

Q. This is a congregation servant?

A. That's right; that's what he is called.
Q. Who else? A. The other is the assistant congrega-
44] tion servant who helps him in those affairs. Then we have the Bible study servant and magazine story servant who takes care of the stories that we work on from door to door.
Q. And what else? A. We have the literature servant who handles the literature for the congregation.
Q. All right. A. The account servant.
Q. All right.
A. Then we have our congregation book study conductors.
Q. Congregation book study conductors. All right, who else?
A. Theocratic ministry school instructor.
Q. All right.
A. Watchtower study conductor.
Q. All right, go ahead. A. Well, that's it.
Q. Do you have such a classification as pioneers?
A. Yes, that's right.
Q. What are pioneers? A. They are those that devote their full time to the ministry, put in at least one hundred hours every month or more from door to door preaching.
Q. What is the company publisher? A. He's the one that naturally holds a secular job and for that reason is not able to devote all of his time to the ministry but he devotes -- does devote all the time that he possibly can to preaching.
Q. What are you?
45] A. I am the account servant in our congregation.
Q. You are the account servant in your congregation. What is your brother? A. He doesn't hold one of the positions.
Q. He doesn't hold a position? A. No.
Q. Is he a company publisher?
A. Congregation publisher, that's right.
Q. Or is he a pioneer?
A. No, sir, a congregation publisher.
Q. That is the same thing as a company publisher?
A. That's right, the same thing.
Q. All right, now, what does the ministerial duties of this congregation publisher, what do they involve, if you know?
A. Well, they are commanded as the rest of us to preach, that's the primary purpose of our ministry, any one of Jehovah's Witnesses.
Q. Where would a company publisher preach?
A. In his home territory wherever he lived.
Q. What do you mean "in his home territory"? Do you mean in a church in his home territory? A. No.

46] Q. That's what I'm trying to find out is where.

A. I might mention that our territory in our towns as well as rural is divided into smaller territories and if, for example, Jimmy could take one of these territories and see that it is covered --

Q. (Interrupting) How large a territory is it?

A. It might cover probably ten square blocks.

Q. Does he have one now?

A. Well, I couldn't tell you for sure.

Q. Did he have one at the time of this hearing?

A. Oh, yes.

Q. And what type or how large an area was it and where was it? A. Well, it was in Colorado Springs but, like I say, I couldn't tell you exactly how large it was but that's about the size of the territories. They are divided into territories that size.

Q. How many parishioners or followers did he have in his territory, do you know?

A. Well, actually we don't have followers.

Q. You don't have followers? A. No.

Q. What were his duties in this territory; what was he
47] supposed to do? A. His duties were to go to these people and preach to them of God's Kingdom.

Q. Now do you mean that he was to assemble them or to preach to them individually? A. Individually and if it's possible we do come together in small groups to study the Bible.

Q. How would he do -- How would he go about this or how would a company publisher or congregation publisher go about this; would he go to each house in his area and preach individually to the people? A. That's right; to every house

Q. What else did he do? A. Well, naturally the purpose of first contact is to try to establish a Bible study with them and then if the Bible study is developed it's his responsibility to study with these persons the Bible.

Q. Would he conduct these studies? A. That's right; he would conduct them himself.

Q. Do you know whether or not he had such a study group going? A. Yes.

Q. At the time of this hearing? A. Yes.

Q. Do you know whether or not he does at the present time? A. No, I couldn't tell you that because he has been living in Oklahoma City for the last couple of months.

Q. Do you know how many groups he had up there in Colo-

48] rado Springs? A. No, I couldn't tell you that.
Q. Did he tell the Hearing Officer he had any?
A. Well, I don't think he was ever asked.
Q. But did he tell him? That was the question.
A. No, I don't think so.
Q. In addition to forming these study groups and studying with these people -- Incidentally, these people that he studies with, are they also congregation publishers? A. Well, in time if they attain a knowledge of the Scriptures and see their need to bear witness to Jehovah's name they do.
Q. In other words, these study groups aren't necessarily made up of members of your faith but they are people who are being recruited? A. That's right, people who are contacted in their homes.
Q. Now in addition to these study groups, did he deal in any literature? A. Oh, yes, literature was used in the door to door preaching.
Q. That is used in that preaching? A. That's right.
49] Q. However, he had no church, is that correct? A. No.
Q. Did he attend a church? A. Well, we have what we call our Kingdom Halls where we assemble for Bible study as a group.
Q. Did he attend one of these? A. Oh, yes.
Q. Kingdom Halls? A. Uh huh.

Mr. Covington: I didn't get that.

The Witness: Yes, he attends the congregation meetings regularly.

Q. Now, is that what is known as the North Unit?
A. That's right.
Q. Colorado Springs. A. That's right.
Q. And how many people attend this one unit? A. Well, we have eighty-two in the congregation regularly.
Q. Eighty-two in the congregation? A. Yes, sir.
Q. Are all these eighty-two people, are they all publishers and account servants and pioneers and Bible study people and so forth? A. No, that is the -- Oh, what you might
50] call the ones that oversee the congregation, that group of servants there. The rest are congregation publishers unless there are pioneers devoting their full time.
Q. He is not a pioneer? A. No.
Q. Now is there any requirement on the publishers as to

how much time they should spend in church work?

A. No, there is no definite time set but we are admonished to put in all the time we possibly can take advantage of -- all opportunities to preach.

Q. You are not supposed to spend one hundred hours a month then, is that correct? A. If we can we should.

Q. Is there any church rule about this one hundred hours a month? A. No, there is no rule.

Q. What is considered by the church to be a proper amount of time for a company publisher to spend preaching and doing work in the ministry? A. The actual door to door work preaching to the public they do suggest that we try to put in at least twelve hours every month.

Q. At least twelve hours a month? A. Yes.

51] Q. Now when you go to these meetings at this North Unit out here -- A. Yes.

Q. (Continuing) -- can anyone preach?

A. Yes -- Well, say, on Sunday there is a public lecture that the public and all are invited to. It is an hour lecture on a given subject, a Bible subject, and then following that is our regular weekly Watchtower study.

Q. Who makes this public lecture, ordinarily speaking?

A. It could be anyone in the congregation.

Q. I understand that but who ordinarily makes them?

A. Well, I have.

Q. Does the congregation servant ever make it?

A. Certinly.

Q. Does -- A. (Interrupting) Yes, all servants.

Q. Does a congregation servant make it how many times a month? A. Well, you see, we just have the one at the congregation once a week so he probably wouldn't come up very often during the month.

Q. Well, it would come up around four times a month, wouldn't it? A. Yes, the talks would certainly.

Q. And in an average -- Say, last month in your unit you would possibly have four services I assume?

52] A. That's right.

Q. Who made the lectures on these services? A. One of them was given by the assistant congregation servant.

Q. All right. A. The other was given by the Bible servant and then one was given by our circuit servant who happened to be visiting our congregation. The other was given by the congregation servant.

Q. Do these congregation publishers ever make these

lectures? A. Certainly.

Q. How often? A. If they're qualified, they do.

Q. If they're qualified. Who determines whether or not they're qualified? A. Well, they really qualify themselves and then this is decided by the congregation servant or the theocratic ministerial school which is really designed for better qualifying us for public speaking so he has the part of making the suggestions to who qualified.

Q. Did you attend the theocratic ministry school?

Q. Yes, sir, I do.

53] Q. And explain that course to me, if you would please, and to the Court. A. All right, First, we have what we call the instruction talk. This might be material over maybe public speaking or how to handle a Bible study. And after that then there is two student talks given, each one of them six to eight minutes long and this is on a given Bible subject, maybe a doggerel point and following that will be a talk or a reading on the Bible itself and that concludes the theocratic ministry school. Then the following week naturally we have a review over the instruction talk the previous week, see.

Q. In other words, the school consists of one session there where you do those things that you just outlined and then the following week you have a review section on it, is that correct? A. Well, review only on the instruction talks. Then there is a new instruction talk the next week.

Q. Then there is a new one the following week?

A. That's right.

Q. How long does this go on, this school?

A. Well, it's been going on since 1943.

Q. Well, if you were going to go how long do you attend?

A. There is no end to it.

Q. You can go or not go as you choose, is that correct?

54] A. That's correct but if we are enrolled then we make it a point to be there regularly and most of the brothers, the men in the congregation are enrolled in the theocratic ministry school.

Q. Do you know of your own knowledge any time your brother has ever preached at the Kingdom Hall service?

A. I can't give you the date but he has.

Q. He has? A. Yes.

Q. Do you know how many times? A. Well, as far as the school and then our theocratic ministry school --

Q. (Interrupting) Now I just asked about the Kingdom Hall

service. A. Well, they are all held in the Kingdom Hall.
Q. But the one that you were talking about, this weekly lecture, has he ever preached in any -- A. (Interrupting) Jimmy hasn't given a public lecture I don't think.
Q. What is your occupation, Mr. Bouziden?
A. I am a paint contractor but I'm also a minister.
Q. Where are you a paint contractor?
A. In Colorado Springs.
Q. In Colorado Springs. Do you have anyone employed by you? A. Yes.
Q. How many people do you employ?
55] A. Well, it's my brother Tom and I do have the business and we have two others that work for us.
Q. Did your brother ever work for you? A. Yes.
Q. How many hours a week do you devote to your business?
A. About forty hours.
Q. About forty hours. Is it a pretty good business?
A. Oh, it's about fair.
Q. It's making you a living?
A. Yes, it's making a living.
Q. Making your brother a living? A. Certainly.
Q. And when Jimmy was working for you it made him a living? A. That's right.
Q. How many hours do you devote a week to your preaching? A. Well, I devote myself approximately five hours a week.
Q. About five hours a week? A. Yes.
56] Q. How about your brother Tom; do you know?
A. Oh, I couldn't tell you exactly but I suppose anyhow three or four for sure.
Q. How about your brother Jim when he was up there with you? A. Same thing.
Q. Three or four? A. Yes.
Q. You devote a little more time than they do, is that correct? A. Yes.
Q. Do you have ordination in your faith?
A. That's right, certainly.
Q. And you are ordained?
A. An ordained minister.
Q. Who ordained you? A. Well, naturally, we get our ordination from the Almighty God himself and this comes from -- through the Bible.
Q. When were you ordained?
A. In October -- October 25th, 1941.

Q. How old were you at the time? A. Oh, I'd have to go to figure but I think I was sixteen.

Q. Sixteen. That would make you forty-two?

57] A. No, I'm thirty-two.

Q. You are thirty-two. And in 1941 you were sixteen. I guess that's right.

Mr. Douglas: I believe that's all.

Redirect Examination by Mr. Covington:

Q. Now just one or two questions. How long was Jimmy up there at Colorado Springs at the congregation where you are an assistant congregation servant; what was the year and the month he was there, approximately? A. Jimmy came there to stay. That was after he was married, came in April of '56.

Q. How long was he there?

A. Well, he left the first of the year.

Q. January of '57? A. January of '57.

Q. Now since that time he has been associated with what congregation? A. Here in Oklahoma City.

Q. And what unit of the Oklahoma City congregation?

A. I really don't know. I didn't ask.

Q. You don't know what they call it? A. No.

Q. What part of town is he living in?

A. In the northeast part.

58] Q. Now you were questioned about his not giving public talks, but does that mean to tell the judge that he never made any Bible talks or gave any sermons before the congregation at any time? A. No, I didn't mean that because his point was on Sunday for the public lecture but as far as giving talks Jimmy has in our service meetings which is held on Thursday evenings. Also the ministry school is held on Thursday evenings.

Q. Was he a regular attendant at the service meeting and the theocratic ministry school? A. Yes, he was.

Q. Did he give his sermons there when his turn came up in those meetings? A. That's right. I don't remember Jimmy missing a one.

Q. What was that?

A. Jimmy never missed any of his assignments there.

Q. Were they delivered before the entire congregation assembled in an assembly for worship? A. That's right.

Mr. Covington: I believe that's all.

Recross-Examination by Mr. Douglas:

Q. Mr. Bouziden, is that the way you pronounce your
59] name? A. That's right, Bouziden.
Q. Tell me at this hearing whether or not your brother was asked if he had any duties as a minister which were peculiar to his position? A. I can't say that I remember that.
Q. You can't say that you remember? A. No.
Q. He wasn't in charge of anything in any of the units of the church up there at Colorado Springs, was he? A. No.
Q. There was someone else in charge of the congregation of the North Unit, is that correct?
A. Someone besides Jimmy, yes.
Q. And someone else was in charge of the Sunday School?
A. That's right.
Q. Someone else had the Tuesday evening study group that he went to? A. Yes.
Q. And somebody else had charge of the theocratic school in the North Unit? A. That's right.
Q. And did he or did he not state that the only thing that he did was give a talk when called upon to do so and read Scriptures in meetings when asked to do so and go
60] from house to house as directed? A. That's right.

Mr. Covington: That is all.

MRS. JAREE LYNN BOUZIDEN was thereupon called as a witness by the defendant and testified:

Direct Examination by Mr. Covington:

Q. Now will you please state your full name?
A. Jaree Lynn Bouziden.
Q. And, before you were married to Jimmy, what was your last name? A. Latrell.
Q. Latrell? A. (Nods head)
Q. Where were you raised? A. Here in Oklahoma City.
Q. And how long have you known Jimmy?
A. About four years.
Q. Now when were the two of you married?

A. In 1955, August 6th.

Q. 1955, August 6th. Where were you married?

61] A. Here in Oklahoma City.

Q. When was it that you and Jimmy moved from Oklahoma City up to Colorado Springs? A. Well, we moved first to Pratt, Kansas. That was right after we were married and then it was in November, I believe, that we moved to Colorado Springs.

Q. November of '55? A. Yes, sir.

Q. And then you stayed in Colorado Springs until what time, please?

A. Well, we moved again in February of this year.

Q. All right. Where are you now living?

A. We are living at 1817 N. E. 31st.

Q. What congregation of Johovah's Witnesses do you and Jimmy attend? A. We attend the North Unit of Jehovah's Witnesses at Britton.

Q. Now, according to the draft board records that are in the file in this case and also according to the testimony of your brother-in-law you were one of the persons that attended the hearing before the Hearing Officer in Pueblo Colorado, January 6, 1956, is that correct? A. Yes, sir, that's correct.

Q. I hand you now a document taken from the draft board file being marked and dated March the 2nd, 1956, headed United States Department of Justice, Washington, D. C., addressed

62] to the Chairman of the Appeal Board and I ask you whether or not you saw that when you were conferring with me last night about the facts in this case? A. Yes, sir, I did.

Q. Now, does that refresh your memory as to -- or to help aid you in determining what took place upon the occasion of that hearing?

A. Yes, sir; and I also have notes that I took.

Q. All right. I am going to ask you about the notes. When you went to the hearing and while the hearing was proceeding, when the Hearing Officer questioned your husband did you have a notebook and a paper and make notations to the questions propounded to him? A. I did.

Q. What took place. A. Yes.

Q. Did you get them all or did you miss any? A. Well, I have most of them until he started on the resume.

Q. Until he started on what? A. Resume.

Q. Well, now, that was the F.B.I. resume or a summary of the secret investigative report of the F.B.I.?

A. That's right.

63] Q. That the Hearing Officer had in his possession is that correct? A. That's correct.

Q. Now we'll go to your notes that you have made first. I'll ask you whether or not the notes that you actually made do you have them in your possession? A. Yes, I do.

Q. And when and where were those notes made?

A. They were made in the hearing room there in the Post Office Building in Pueblo, Colorado.

Q. As the hearing progressed, is that correct?

A. That's right.

Q. Now then, using those notes that you have in your hand, would you please tell Judge Chandler whether or not they refresh your memory? A. Yes, sir, they do.

Q. Now using them to refresh your memory --

Mr. Douglass: (Interrupting) May it please the Court, do you intend to introduce these notes into evidence?

Mr. Covington: No.

Mr. Douglas: Now we'll object to using -- to her testifying from these notes which, at best due to her relationship with the defendant, would be self-serving and unless they are going to try to introduce them in evidence --

Mr. Covington: (Interrupting) If you will agree, I will have them marked as Defendant's Exhibit No. 1 -- Rather I suppose you use letters for the defendant's exhibits, do you, your Honor, or numbers?

64] The Court: Either way.

Mr. Covington: I would take it then as Defendant's Exhibit A and I offer those notes and I ask you this.

Q. (By Mr. Covington) Did you make those notes yourself? A. Yes, sir, I did.

Q. And do they accurately reflect what took place upon the occasion -- I mean a summary of the subjects that were covered by question upon the occasion of that hearing?

A. Yes, sir, part of them are questions and part of them are answers.

Q. Now then would you please produce them to me.

A. (Witness hands to counsel.)

Mr. Covington: I offer them in evidence, namely Defendant's Exhibit A being a sheaf of four papers and I ask that they be marked A-1, A-2, A-3, A-4 and A-5 -- There are five pages instead of four.

I will offer them into evidence.

Mr. Douglas: May we have an opportunity to examine them, your Honor?

The Court: Yes.

Mr. Douglas: We won't object to them, your Honor.

65] Mr. Covington: I didn't get --

Mr. Douglas: (Interrupting) We have no objection.

Q. (By Mr. Covington) Using Defendant's Exhibit A-1 to A-5, I ask you to now state again whether or not that exhibit refreshes your memory as to what took place upon the occasion of that hearing? A. Yes, sir, it does.

Q. Now then, using that exhibit to refresh your memory, would you please tell Judge Chandler what took place step by step as you best recollect the hearing, stating where you went to the hearing and the building and what occurred from the time you went into the room and just take it right on down to the time you left. A. All right. We went to Pueblo, Colorado. The hearing was held in the theater building -- or the Post Office Building there and after introducing ourselves to Mr. Evenson we went in and he told Jimmy that he had some questions that he would like to have him answer. So then he began to question Jimmy. He asked him at this time what his address was and Jimmy told him 1912 East Saint Vrain, Colorado Springs. He asked him, of course, his full name and he told him Jimmy James Bouziden. Mr. Evenson then asked him his age and he stated that he was twenty-two. Mr. Evenson asked him his prior address and Jimmy listed that as being Pratt, Kansas. Mr. Evenson asked him if he were married and to whom and he, Jimmy, told him yes that he was and that he was married to Jaree
66] Lynn Bouziden. Mr. Evenson asked him where he had been married and Jimmy told him, "Oklahoma City, Oklahoma." Then Mr. Evenson asked him "when" and Jimmy told him "August the 6th, 1955." Then Jimmy -- Then Mr. Evenson asked Jimmy

what his occupation was and Jimmy stated that he was a painter and a minister. Mr. Evenson asked him how much he made per hour and Jimmy stated that he made approximately two dollars per hour. Mr. Evenson asked him how many hours he worked and he told him forty hours. Then he asked Jimmy if he smoked and Jimmy said, "No." Mr. Evenson then asked him if he was a drinker and Jimmy said, "No." He then asked him if he had ever been arrested and Jimmy said, "No." Then Mr. Evenson asked Jimmy if he was a member of a church and Jimmy said, "Yes." Of course, asked him, "What church?" And Jimmy told him he was one of Jehovah's Witnesses and Mr. Evenson asked him how long he had been associated with the Jehovah's Witnesses and Jimmy told him since 1940. Then he asked him how you become one of Jehovah's Witnesses and Jimmy told him that it was through a study of the Bible. Mr. Evenson then asked him how he got his ordination and Jimmy told him that it was through a study of the Bible, through attending meetings and through baptism. Then Mr. Evenson asked Jimmy if he was baptized. Jimmy said, "Yes," that he was. Mr. Evenson then asked him when he had been baptized and he told him, "In July of 1942." Then Mr. Evenson asked him his stand on military service and Jimmy answered that as a Jehovah's Witness,
67] as a minister, he refused to bear arms. Mr. Evenson asked him if the church had a certain creed concerning warfare and Jimmy told him that it was an individual matter that each one made a choice and at this time he asked Jimmy if his parents were deceased and Jimmy told him, "Yes," that they were. Then he asked -- Mr. Evenson asked Jimmy how old he was when he began to associate and he told him that he was six years old.

Q. Associate with what? A. Jehovah's Witnesses.

Q. All right. A. He asked him who he was living with at the time of his beginning to associate and he told him that he was living with an aunt and uncle. Mr. Evenson asked Jimmy if he was -- if they were members of Jehovah's Witnesses and Jimmy told him, "Yes," that they attended. He began -- Then he asked if Jimmy -- How long had he been attending -- Since he lived with this aunt and uncle and he said, "Yes." Mr. Evenson asked him if he would defend his home and his family and Jimmy said, "Yes," that he would. Mr. Evenson asked if the nation was invaded would he defend his home and himself and his family and Jimmy stated, "Yes," that he would, that he would defend his home and his family and his brothers in the faith. Then Mr. Evenson asked him

68] his stand on the Israelite wars and asked him, "Would you participate in theocratic -- "

Q. (Interrupting) You say Israelite wars You are talking about the Bible wars?

A. Yes, sir, that's what he was speaking of

Q. The ancient Israelite wars and theocratic wars?

A. Yes. Then Jimmy told him that mankind did not direct those battles but it was Jehovah and his son Christ Jesus that would fight the final battle. Then Mr. Evenson told him where he attended and Jimmy told him, "Colorado Springs." And Mr. Evenson asked him where his publisher's record card was and Jimmy told him that it was in Colorado Springs and he asked -- Mr. Evenson asked him when it was transferred and he told him "two months ago" and it was then that he explained that according to the instructions of the Watchtower Society that you leave your card with the congregation with which you are originally associated until you know if you are going to be back there before three months are up. Then Mr. Evenson asked who the congregation servant of that particular unit was and he told him, "Amos Freeman."

Q. What congregation, Pratt, Kansas? A. No, the Colorado Springs North Unit. Then Mr. Evenson asked him which congregation he was associated with and Jimmy told him that he was associated with the North Unit of the Jehovah's Witnesses in Colorado Springs. Mr. Evenson then asked him how many
69] members there were and Jimmy told him that there were approximately seventy associated at that time. Then Mr. Evenson asked him how many had a classification as ministers, was it several or limited, and Jimmy told him that all those that had dedicated their lives and symbolized this by water baptism were counted as ministers. Then he asked him -- Jimmy if he was classified as a minister and Jimmy told him, "Yes," that he was. He -- Mr. Evenson then asked him, "Is your brother a minister?" And Jimmy answered, "Yes," tnat he was At this time he asked Jimmy how he became a minister and again he answered, "By attending the meetings, by study of the Bible and by baptism itself." Then he asked Jimmy if he were ordained and he said that he was. He explained that we get our ordination from the Bible. Then Mr. Evenson asked, "Do you have a youth program?" And Jimmy explained that the theocratic ministry school was where we all learn to become more better ministers and then Mr. Evenson asked if we have a Sunday School and Jimmy explained that the parents and children alike attended a Bible lecture on Sunday afternoon and that this was followed

by the Watchtower study. And Mr. Evenson then asked him who conducted the Watchtower study and Jimmy told him that Mr Bill Markwin was the conductor.

Q. Now, taking that document that I have handed to you
70] from the draft board file dated March the 2nd, 1956 on the stationery of the Department of Justice, addressed to the Chairman of the Appeal Board, and turn now to the second page and I will ask you to direct your attention to the second sentence of the second paragraph which reads, "The Hearing Officer observed that the registrant appeared to be evasive and that he seemed to lack a knowledge of the Bible in general." Now, can you tell us whether Jimmy evaded or refused to answer any questions asked by the Hearing Officer at any time? A. No, sir, he answered every question.

Q. Now then, did the Hearing Officer at any time probe Jimmy or put questions to him to determine the extent of his Bible knowledge? A. He did not. He asked him no questions on the Scriptures.

Q. Now I direct your attention now to the third sentence where it says, "The registrant told the Hearing Officer that he does not smoke." That took place, didn't it?

A. That's right.

Q. Now, "When first questioned about his drinking habits he stated that he does not drink, but when pressed, he admitted that he has drunk intoxicating liquors and still drinks beer." Now then, did Jimmy deny that he ever drank?

A. No. Mr. Evenson asked him if he was a drinker and
71] Jimmy said, "No, that he wasn't but he did not -- but he did say that he had drunk beer.

Q. Well, now, I suppose when Jimmy answered he wasn't a drinker he asked him if he ever took a drink. Is that what happened? A. I believe that's all correct.

Mr. Douglas: I think that's leading and suggestive.

Mr. Covington: Perhaps it is.

Q. (By Mr. Covington) Just what did the Hearing Officer say in substance that led to this comment that he made, "When pressed, he admitted that he has drunk intoxicating liquors." What did the Hearing Officer say?

A. Well, he pointed out -- First of all, like I said, he asked Jimmy if he was a drinker and Jimmy said, "No," that he wasn't a drinker. And he pointed out that in the resume

it did say that he had been seen or had drunk beer. And Jimmy said, "Yes," that he did drink beer but that he wasn't a drinker.

Q. Well, did he ask him anything about whether or not he habitually drank, habitually drank liquor?

A. No, I don't recall that.

Q. All right. Now you pass on down into that paragraph and you see where it is said that he was questioned about arrests and that Jimmy first stated that he had never been arrested. Do you see that? A. Yes, sir, I see that.

Q. Did Jimmy ever at any time state that he had been
72] arrested to this Hearing Officer? A. No, sir.

Q. And did the Hearing Officer as stated there in that next sentence ask him whether or not he had ever been in trouble with the police? Did he ask him that? A. I believe the question was, "Had he ever been arrested?"

Q. Yes. And what did he say? A. Jimmy told him, "No," that he had never been arrested.

Q. All right. When that was said then did the Hearing Officer proceed to these tickets? A. Yes, sir, he did.

Q. Now you see in that report there, down there in the latter part of the setence that says, "He further admitted that the Pratt, Kansas, police department arrested him on October 4th, 1954, for running a stop sign." Now did Jimmy ever tell him he had been arrested for running a stop sign?

A. No, sir, he told him that he had been issued a ticket for running a stop sign.

Q. What was said about this parking ticket that had been
73] issued on account of his car being overparked in Pratt, Kansas? A. Jimmy told him that he was never -- had known nothing about this, but that it might have been that someone else was driving his car as three or four individuals did use the automobile.

Q. Well, now, while he was living in Pratt, Kansas, die he allow other people to use his car, do you know?

A. Well, I used it.

Q. Yes. Did you ever get a ticket for overparking?

A. No, sir.

Q. This was back in 1954 when he was living up in Pratt before you were married. You don't know what happened t..en, do you? A. No, sir, I don't.

Q. But do you know what he told the Hearing Officer about what did happen in Pratt, Kansas, in 1954? A. Yes, sir.

Q. Now you go on to that next paragraph and he states

here to the Department of Justice, apparently from what the Department says, "Jimmy did not appear to be able to answer the question about how he became a member." Now, did Jimmy ever falter or be unable to answer the question about how he became one of Jehovah's Witnesses?

A. No, sir, he answered the question. Mr. Everson
74] wanted it explained in terms of his religion so that he could understand it but Jimmy did answer how he became one of Jehovah's Witnesses as my notes said.

Q. What did he tell him about that?

A. He said that he became one of Jehovah's Witnesses through a thorough study of the Bible, through meeting attendance and through baptism.

Q. Now then, after -- When he gave him that information did he give it to him voluntarily or did the Hearing Officer have to pull it out of him?

A. No, he volunteered the information.

Q. Now the Hearing Officer stated that Jimmy could not verify the fact that he had been baptized. Did Jimmy fail to state to the Hearing Officer that he had been baptized?

A. No, sir, he told him that he was baptized.

Q. Now then, down there on the third page in the middle of the paragraph the statement is made that Jimmy said that he was not against non-combatant service as such. Did he make any such statement to the Hearing Officer?

A. No, sir, he didn't.

Q. What, if anything, did he say to the Hearing Officer about this subject of non-combatant service?

A. Well, he told him that he was opposed to all forms
75] of military service; that he was a soldier in the army of Christ Jesus and that he bore his allegiance to Jehovah God.

Mr. Covington: That is all.

The Court: Is this cross examination going to be very long?

Mr. Douglas: I don't believe so, your Honor.

Cross-Examination by Mr. Douglas:

Q. Mrs. Bouziden, referring to that exhibit which is the letter on the Department of Justice stationery that you

were testifying from a few minutes ago, would you please turn to Page 2? A. All right.

Q. Now in reference to your testimony regarding this traffic ticket where you said that your husband offered an explanation to the Hearing Officer as to that somebody else was driving his car. Do you recall that? A. Yes, sir, I do.

Q. Would you look at the bottom of Paragraph 2 on Page 2 and just read to the Court the last sentence in this letter.

A. It says, "With reference to the first traffic warrant which was issued on August 9, 1954, registrant offered the explanation that somebody else must have been driving his car at the time the traffic ticket was issued and that he did not know anything about the ticket."

76] Q. Is that a fair statement of what transpired as regards this traffic ticket? A. Well, Jimmy explained to him that there were three or four that drove his car and that the only explanation he could offer for the ticket was that it was issued to someone else; that they didn't tell him, but it was charged against him because the car was registered in his name.

Q. That's about what that says, isn't it?

A. Well, it says that he offered the explanation.

Q. Well, did he offer an explanation or not? A. He did.

Q. All right. Now, I believe you stated that the Hearing Officer asked your husband if he was a drinker? A. That's right.

Q. As a matter of fact, didn't he ask him what his drinking habits were and your husband said that he didn't drink, isn't that right? A. He asked Jimmy if he was a drinker and Jimmy said, "No," that he wasn't a drinker.

Q. Then did he ask him anything further about his drinking habits? A. Then he asked, he indicated about the resume where it said that he did drink beer and Jimmy told him, "Yes," that he did drink beer but that he wasn't a drinker.

77] Q. Jimmy also told him that he had drunk intoxicating liquor? A. I do not recall.

Q. You don't recall. Now, isn't it a fact that the Hearing Officer asked your husband upon what Scriptures he based his belief and that he couldn't quote but one?

A. He didn't ask Jimmy to quote any Scriptures.

Q. Did he ask him on what Scriptures he based his belief?

A. Not that I recall.

Q. You don't recall him asking him anything about --

A. (Interrupting) I have nothing about it in my notes

Q. Your notes, however, I believe you testified didn't

contain everything that happened up there? A. That's true.

Q. You said that you got -- When they got into the hearing you got behind and kind of got lost on your notes, is that correct? A. No, I stopped when they started questioning him on the resume.

Q. Are you a minister? A. Yes, sir, I am.

Q. How long have you been a minister?

78] A. Well, I began associating with Jehovah's Witnesses when I was just a child and I was immersed in 1943.

Q. Do you know where Jimmy was immersed?

A. He was immersed at Alva, Oklahoma.

Q. Does the Jehovah's Witnesses faith keep a record of all of those that are immersed?

A. Yes, sir, we have records.

Q. Do you know if there is a record of his immersion?

A. I am not sure. I'd say that there was on his publisher's record card, yes.

Q. At the time that he was immersed did he then become a minister? A. Yes, he did.

Q. How old was he at the time, if you know, please?

A. Well, I'm not sure how old he was. He was very young but then, of course, we have Scriptural examples such as Samuel and Timothy where they became ministers while very young. Also Christ Jesus at the age of twelve was a minister.

Q. All right. You were testifying about the different activities in your unit out here at Britton I believe. Does your husband attend all of these activities?

A. Yes, he does

Q. Now that's two or three times on Sunday, which is it you say you have the public lecture in the morning?

A. No, we meet --

79] Q. (Interrupting) You meet in the morning?

A. We meet in the morning to go from door to door in our preaching activities.

Q. Then what do you do in the afternoon? A. Well, in the afternoon we study to prepare our lessons that night.

Q. Then you have some meetings at night?

A. That evening we have a Bible lecture and also study in the Watchtower Magazine which is a Bible aid.

Q. Then during the week what type of activities do you do? A. On Tuesday evening we meet prior to our Bible study in the little book and we go from door to door with the magazines and then we come back to our book study and attend that.

Q. Do you meet any other night during the week?
A. Well, we meet then again on Friday night
Q. On Friday night. Now is your husband a painter at the present time? A. Yes, he is.
Q. Is he employed here in Oklahoma City? A. Yes, sir.
Q. How many hours a week does he work, do you know?
A. Well, I would say approximately forty hours a week.
80] Q. About forty hours a week. How much time does he spend following his ministerial duties? A. Well, like I said, there is counting our personal study which we try to do before every meeting night Tuesday would take about an hour's study and our meeting for Friday night takes probably an hour and a half or two hours to study our lessons for the theocratic ministry school and the service meeting and we also study for the Watchtower meeting on Sunday. Then he spends -- We try to spend two hours Sunday in door to door activities and if we happen not to be working on Saturday, well we go from door to door with the magazine Saturday morning. Then like I said we meet and go for an hour or an hour and half before the study on Tuesday.
Q. Did you spend that much time back in August of 1955 shortly after you were married? Was he spending that much time at that time? A. No, we have increased it somewhat since we have been married.
Q. He is not working -- He wasn't working any more hours then than he is working now, was he?
A. May have been a little bit.

Mr. Douglas: I believe that's all.

Mr. Covington: That is all. Thanks a lot.

* * * * *

82] **MAURICE A. EVENSON** was thereupon called as a witness by the defendant and testified:

Direct Examination by Mr. Covington:

Q. Mr. Evenson, you were served with a subpoena duces tecum to produce the stenographer's transcript of the hearing and any longhand notes that you have and also a copy of your report that you made to the Department of Justice following the January 6th hearing in 1956 in this case of Jimmy James

Bouziden. Did you receive that subpoena? A. I did

Q. And you have appeared here in response hereto, is that correct? A. Yes, sir.

Q. Now have you produced and brought with you to the court house here any of the documents called for in the subpoena duces tecum?

Mr. Camp: As to the documents which he has brought and that phase of the subpoena we object to any production of any material which the defendant has requested in his subpoena and the reasons as stated in our memorandum brief I believe, amply cover the problem here confronting the Court.

83] Mr. Covington: I didn't think the brief covered this angle of it. I didn't think they covered that angle when we discussed this in chambers this morning, namely the matter of biasness and one-sideness and irregular and an improper report on the testimony given in this hearing.

The Court: Let's let him get down to each record and then you make your specific objections.

Q. (By Mr. Covington) Now then, I call upon you to produce first the stenographer's transcript of the questions and answers at the hearing.

A. There is no such transcript.

Q. Now then, Mr. Evenson, I take it from your answer that there was no stenographer at the hearing?

A. That is correct. The government does not provide me with a stenographer.

Q. And you didn't have your stenographer there?

A. No, sir.

Q. You are a licensed attorney in the State of Colorado?

A. That's correct.

Q. And you practice in Pueblo and you do have a private stenographer but you didn't have your stenographer at the hearing, is that correct? A. That's correct.

84] Q. And so the record would show here and I ask this question only for the record that there was no stenographer's report taken, is that correct? A. That's correct.

Q. Now did you make any longhand notes as to the questions and answers? A. I did.

Q. I will ask you this: Did you have typed out in advance of the hearing certain questions? A. No, sir.

Q. Did you have written out in advance of the hearing certain questions? A. No, sir.

Q. Did you have written out in advance of the hearing notes as to what you were going to question upon? A. No, sir.

Q. Did you make notes at the hearing as it progressed of the questions that you propounded and answers that you were given? A. Yes, I made longhand notes.

Q. Did you make these notes as the hearing progressed or did you do it after the hearing, based on recollection?

A. I made it as the hearing progressed.

85] Q. Now then, did you bring those notes, longhand notes, along with you as requested in the subpoena served upon you? A. I did.

Q. At this time I request that you produce those longhand notes.

Mr. Camp: Now, if the Court please, the Government objects to the production of those notes for three reasons, the first being that the defendant -- or the Hearing Officer is present, that he can testify as to any matters which were -- That transpired during the hearing; that the notes would not be the best evidence nor of any evidentiary value; that they could not be used for impeachment unless a basis for impeachment was properly laid beforehand. That secondly, that he is an employee of the Department of Justice and, as such, under Executive Order 3229 as revised is prohibited from the production of a part of his files and these are a part of his files in this case and that it would be unreasonable and oppressive under Rule 17C of the Federal Rules to force the compliance with this subpoena for those reasons.

Mr. Covington: Now may I just for the sake of the record make a statement in answer to that as well as to our purpose. In answer to the objections made we do not propose to probe the mental processes of this Hearing Officer and propound any questions to him as to his mental process. The purpose of

86] requesting these notes and why they become relevant and material is to establish as a part of the affirmative defense that the defendant is making in this case that the report and recommendations that the Hearing Officer made to the Attorney General in Washington before the final recommendation was made to the Appeal Board was biased and one-sided and contained representations as to the conduct of the defendant and as to his testimony and evidence given that is incorrect and

inaccurate and misleading and prejudicial so as to deny the defendant a full and fair hearing in the Department of Justice itself before the final recommendation was made by the Department of Justice to the Appeal Board. As to the 3229 Order of the Attorney General, it is not an order that cannot be overriden by the courts of justice. As to the objections that it would be burdensome and oppressive, the burden is upon the Department of Justice to tell the Court and show the Court wherein this would be burdensome and oppressive under the rules and since the document is in court and has been produced they have failed to show any national interest or any security or national safety that is being violated by a production of this document. It is relevant and material in that it assists the defendant in making his defense which he cannot complete unless and until the document is produced. He wants the document not to impeach this witness as stated because we don't propose to question this witness as our witness. We
87] propose to -- I mean as to what his report was. We think the report speaks for itself. It's the best evidence and it would be definitely improper for us to inquire of him orally as to his report; in view of these circumstances and based upon the statements made by the Government counsel and those that I have made as to my purpose I suggest that the objection made by the Government ought to be overruled and that we at this time demand a production of the document called for; namely the longhand notes made by this officer at the hearing.

The Court: Do you have your notes?

The Witness: Yes, sir.

The Court: Will you produce them?

(Reporter's Note: Witness leaves the stand and goes to the counsel table.)

The Court: I am not certain about the law as to whether or not this is admissible. I ought to be because I should know that much about the rules of evidence and the effect of these rules. I do know that it seems to me they would be the best evidence of what did take place there, if what took place there is a necessary part of this case and necessary to a proper, full, fair determination of it, it seems to me that

this hearing is not different from an ordinary trial of any case and I have always believed that the purpose of any action in court is to find out as quickly as possible what the
88] true facts are and then apply the law to the facts. There may be some reason why these notes should not be placed in evidence. If I were the examining officer or the Attorney General I would insist that they go in evidence to do away with any suspicion of unfair dealing on my part. I just wouldn't feel that I wanted to have that implication made.

Mr. Camp: If the Court please, of course, we can see no evidentiary value which could be attached to these notes and as the witness is prohibited by his order to divulge those but as we have obtained discretionary permission from the Attorney General to produce these to the Court for an in camera inspection without them being introduced into evidence and not being made available to the defendant with the witness here to answer any questions propounded to him, we would state to the Court that we would be willing under those circumstances for the Court to inspect this document, these notes, and rule on whether or not there is any information which would in any way change any of the answers or any of the evidence as to the fairness and the correctness of this report and that is what the defendant seeks. And we would ask that they be sealed and so preserved.

The Court: What is your attitude about that? (Addressing Mr. Covington.)

89] Mr. Covington: Well, your Honor, I certainly do not object to the in camera inspection of these notes by the Court. I have myself refrained from stepping up here and handling this document until I got a final ruling from the Court. I do object --

The Court: (Interrupting) Yes, I haven't ruled on it. I indicated how I felt on it but not how I was going to rule.

Mr. Covington: I wanted the Court to know that I haven't looked at it yet because I don't want to violate any order of the Court and Attorney General.

The Court: I understand. I haven't admitted it in evidence.

Mr. Covington: The document has been introduced by the witness and the Clerk has marked it but it is not, as I understand, yet an exhibit in evidence.

The Court: Yes, it has not been admitted in evidence yet.

Mr. Covington: I think it's perfectly proper for the Court to inspect the document but I do suggest to the Court that my objection or my concession does not stop there. There cannot be a full and fair hearing in this Court until counsel for the defense has had an opportunity to examine these notes. They pertain to the defense. I cannot use them, I mean I can't -- Since I don't know what is in them I will be
90] at a total loss and crippled in any effort to further question the witness or to ask any questions as to what transpired or what else happened and, therefore, I do not agree with the suggestion made by the Attorney General in the discretionary release to the Assistant United States Attorney that these be inspected only by the Court in camera. I agree to the in camera inspection first but after the in camera inspection I still insist that notwithstanding the concessions made by the Attorney General that the document ought to be produced so that I can look at it and inspect it and discharge my duty as a member of the bar of this Court in the representation of the defendant and I cannot adequately protect his rights as counsel unless and until I have had an opportunity to inspect. And I do understand, of course, that the Attorney General would object very strenously against this going in for general purposes.

The Court: I am inclined to not accept the responsibility of determining whether or not there is anything of material value to the defense in that document. I don't know this case like the attorney for the defendant; I don't know whether anything in there would be important for the defense of this boy. This boy, although he is refusing to serve his country in the armed services, is still an American citizen and he is entitled to every right that anyone in this courtroom is entitled to. I don't feel qualified to
91] look at that and tell whether or not it would aid in his defense. I always hesitate to take the responsibility of reading something and having a lawyer on one side of the case wonder all his life if it could be possible that

a judge would be dishonest and not disclose something or if that judge could be so unskillful a lawyer himself that there might be something in that instrument that he overlooked. I just wouldn't want to take that responsibility and I'm not going to view the papers. They are marked as exhibits. I will reserve my ruling on it, and my intention at this time is not to let them in evidence, but I may change my mind as you go along.

Mr. Covington: Yes, your Honor.

The Court: My reason is this, that some of the courts have passed on these matters --

Mr. Covington: (Interrupting) That's right

The Court: (Continuing) There is an indication that likely they are not admissible. The Appellate Courts are the ones to extend the law if anybody does it and I think as I stated, that if I were a lawyer representing anybody in a court of justice there wouldn't be anything about that case that I wouldn't require my client to voluntarily divulge to the court and jury in an attempt to receive justice, to give justice not only to my client but to the opposing party. That is a cardinal principle with me but I'm not on the Supreme
92] Court of the United States and neither am I an appellate judge and these rules are technical. I believe that it could not possibly harm anybody to let them in and it might be in the interest of justice, but these technical rules seem to indicate that I haven't the right to let it in at this time and I am going to exclude it unless I change my mind about it after informing myself better as to the law.

Q. (By Mr. Covington) Now then, you have also been called upon in response to the subpoena duces tecum to produce here at this trial the typewritten report that the Hearing Officer, that is you, made to the Attorney General following that hearing on January the 6th and I ask you whether or not you have produced a copy of the original report of the Hearing Officer to the Attorney General following that January 6th, 1956 hearing? A. Yes; I have my office copy.

Q. Now you are requested at this time the same as I requested you to produce the longhand notes that you made to also produce the carbon copy, office copy, of the report that

was sent to the Attorney General.

Mr. Camp. If the Court please, we make the same objections as previously made with the other observation which Mr. Covington has just made to the Court that he has no basis upon which to believe that anything unfair was before
93] this Attorney General when he made his recommendation to the Appeal Board, that this as the other matter, smacks of a fishing expedition in an attempt to find out if there might be something of evidentiary value and state that there are no evidentiary matters to the Court at this time. Also our other objection.

Mr. Covington: I have not stated --

The Court: Yes, I understand. He misunderstood you. I understand your view is that you do have reason to believe because of the report of the Attorney General to the Appeals Board --

Mr. Covington: (Interrupting) Yes.

The Court: (Continuing) -- that there were statements made in the report that caused the Attorney General to take the position he took and that those statements you have reason to believe are improper and not justified by the evidence.

Mr. Covington: That is right.

The Court: He made a statement you could misconstrue. If you will produce those and have them marked.

(Reporter's Note: The witness leaves the stand and goes to the counsel table.)

Mr Camp: Now that the Court has had those produced --

94] The Court: (Interrupting) What exhibit is that?

The Clerk: Exhibits B and C.

The Court: Exhibits B and C.

Mr. Covington: Those would be for identification only.

The Court: Yes.

Mr. Camp: We again would state to the Court that, having handed to us the discretionary power for having these made available for the Court's in camera inspection only and not for evidentiary exhibits we would in fairness offer those for the Court's inspection in that limited capacity so that the Court may, if he feels necessary, compare it with the Attorney General's recommendation to resolve the question of fairness of recommendation.

The Court: I am not ungrateful for the confidence placed in the Court but I feel that the instrument would be of no value to this defendant under those circumstances and, if he is entitled to them, he is entitled to them and, if he's not, he's not and no middle ground will satisfy the situation. Now I think that, as counsel stated, it might be a fishing expedition. I don't know about that. In the days when I practiced law you could fish but you didn't get very far with it and then they came along with the new Federal Rules and then some of the State Courts got more liberal on the subject. Now it is considered perfectly proper to fish and the lawyers in this
95] city to my great pleasure just divulge everything in cases, in the civil cases that come before me and there is no reason as I see it why a citizen's government, unless it should affect the national defense and give aid and comfort to our enemy, should object to this. They may have the right to but I can't see the reason for it.

Mr. Camp: Of course, if the Court please, will indulge me a moment, as is self-evident I believe once the barrier is broken down in this type of case it may very well be a Communist case that this precedent is cited to support and so we must, although we feel that everything is in the report that is in the other, we must obtain that degree of consistency in order to protect ourselves when the country is in peril.

The Court: Of course, the only answer I see to that is obvious. In every one of these cases, as I understand, the law in America and what I learned at my mother's knee and in school were these rights that we have in America and that every man is presumed to be innocent unless he is proved to be guilty and so we should as judges presume that every man who stands before the Bar here in a criminal case is innocent

until proved guilty and I try, no matter what kind of a case it is, to apply the same rule that I would apply if the distinguished United States Attorney were the defendant in
96] the case and that is the only rule that I have ever learned. But I am a District Judge and the higher courts have laid down certain rules and I try to follow them and where I am unable to come to a definite conclusion I see to it that the record is made very clear so that the parties will on appeal have the precise and exact question very simply presented to the higher courts.

I am going to reserve my ruling on this at this time also.

Mr. Covington: Yes.

Let the record state that had the Court called upon me for reasons and purposes for this document I would have stated the same reason and the same purposes as I did for the previous document that the Court has reserved ruling on so I won't have to repeat myself; namely that they are for the purposes that I stated.

The Court That is agreeable.

By agreement of counsel with the approval of the Court you have done that and it is the same as if you had restated your entire purpose and the Government's entire objection.

Mr. Covington: Yes, sir.

Q. (By Mr. Covington) Now, I have one other question. You did not have the resume, the F.B.I. resume, is that correct? A. At one time I had it, yes, sir.

Q. I am not asking now, and I didn't call for it -- I did call for it in the subpoena. A. That's right.

Q. But you don't have it any longer? A. That's correct.

Q. May I ask, did you have the F.B.I. report that the resume was made from; did they send that to you?

A. Yes, sir.

Q. And you used that, did you, in conducting your hearing and carrying out your duties?

A. I did not use it at the hearing. I used the resume.

Q. I understand but did you use it at any time while you had this case in your hands? A. Yes, I read it prior to the hearing and compared it with the resume.

Q. And, of course, the difference between that and the resume was, among other things, the resume didn't show the names and addresses of the witnesses, is that correct?

A. That's it; that's correct.

Q. And did you make a verbatim comparison of the resume; did you compare it and let somebody else read it, is that right? A. No, I read through the F.B.I. report which is voluminous.

Q. Is it more voluminous than the resume?

98] A. Oh, yes, much more so.

Q. How many times? A. I would say approximately three or four times. You have an individual sheet for each agent's investigation with each witness.

Q. Yes. A. And on the resume it's all typed together.

Q. Yes, I get it. Now then, that original F.B.I. report was returned by you to the Department of Justice in Washington, is that correct? A. Yes, sir.

Q. And you did that, of course, pursuant to the order of the Attorney General in respect to handling F.B.I. reports, is that correct, the originals? A. That's correct.

Mr. Covington: That is all.

The Court: Do you care to cross examine?

Mr. Douglas: We have no questions at this time.

Mr. Covington: Now then in order to not hold the gentleman from the Government here I will call the F.B.I. agent that is appearing in behalf of the agent in charge.

99] MR. EDWIN TULLY was thereupon called as a witness by the defendant and testified:

Direct Examination by Mr. Covington:

Q. Will you please state your name, your address and your occupation? A. Edwin Tully, Assistant Special Agent in Charge, F.B.I., Oklahoma City.

Q. And, Mr. Tully, how long have you been with the F.B.I.

in the Department of Justice? A. Fifteen years.

Q. And you are, of course, a licensed attorney, I assume? A. I am not.

Q. Sir, you are not a licensed attorney? A. No.

Q. Now as a part of your duties as Assistant Agent in Charge of the Federal Bureau of Investigation here in Oklahoma City and in response to the subpoena you have appeared here and brought with you the original F.B.I. reports called for in the subpoena duces tecum served upon the -- your superior, immediate superior, the agent in charge, is that correct? A. Correct.

Q. And in court I call upon you, sir, to produce the
100 | original reports of the Federal Bureau of Investigation that have been called for in the subpoena and which you have brought with you.

Mr Camp: If the Court please, we would again make the same objection which has previously been made relative to the production of documents of this nature in this trial and, further, would state to the Court and ask that the witness not be required to produce these documents as the Supreme Court in the United States v. Nugent at 346 U.S. 1 and in Simmons v. The United States, 348 U.S. 397 --

The Court: Simmons, S-i-m-m-o-n-s?

Mr. Camp: (Continuing) -- have had a similar matter before them by Mr. Covington and the Supreme Court has ruled that all the defendant is entitled to is a fair resume of the F.B.I. report. In that case it was stated that the issue was:

"It is the Department's refusal to disclose the entire F.B.I. reports which precipitates the issues now before us."

Mr Covington: May I -- Not to interrupt you but so the judge might understand that case, the issue there was a failure to produce that in the administrative agency, namely, the Department of Justice hearing and not in court.

101 | Mr. Camp: That's right. The same facts and the same logic would apply, though, whether it be at the administrative hearing or in court.

The Court: I am familiar with that case and I am going to sustain your objection. I would like this, however, if you will submit it and have it marked so the higher courts can have that in the event that the Supreme Court of the United States wants to take a look at it they can.

Is there any objection to that?

Mr. Camp: Of having the complete F.B.I. report marked and sealed?

The Court: Yes.

Mr. Camp: And put it in the record?

The Court: Yes.

Mr. Camp: We would agree to that for that limited purpose.

The Court: If, of course, as a last resort they decide they want that evidence, this is a court case, why it will be in the record. But I am not going to look at it and nobody else is in this court.

I think that case is nearly enough in point that I have to follow it.

In a case where it wasn't too important I might peruse it and decide whether or not there is any difference. If you get right down to it, there have been some instances
102] where I have done that with instruments and taken that responsibility but it has been where you didn't have to practice law, but just determine whether one fact or another was there, but not determine whether or not it would be beneficial in the defense of a case. That is a large order. I think this case is the same as the Simmons and the Nugent cases and I will let the higher courts change their minds before I hold that way. I am bound by that.

Mr. Covington: I don't mean to interrupt, your Honor. I would like, however, inasmuch as the Court has ruled before hearing from me in open court -- The Court has heard me in chambers --

The Court: Yes, I want you to put everything in the record on this before I rule and then I will rule.

Mr. Covington: In response to the objection made and the order of the Attorney General on which the United States bases its objection I would like to let the record show that the purpose in asking for the production of this F.B.I. report at this time is multiple. First, I desire to have the Court use this F.B.I. report and me to use it in order that during the interrogation of the defendant we can use it to determine whether or not the Department of Justice furnished him a full and fair resume of the adversity of evidence and, incidentally, I might say that on that point the United States Court of Appeals for the Ninth Circuit specially ruled in White
103] against the United States - I do not have the citation in my memory but I can supply that - that that objection was not well taken. The supreme Court of the United States denied certiorari in the White case.

Now, however, the second reason for wanting the F.B.I. report at this time is for another reason not passed upon by any court down to this moment and it is that, according to White against the United States, the Ninth Circuit held that the very purpose of the entire departmental procedure under Section 6J of the Universal Military Training and Service Act was to turn up evidence that is favorable and beneficial and to aid and assist the registrant in making a full and fair presentation of his case to the Appeal Board and, inasmuch as favorable evidence is gathered by the F.B.I. and which we have every reason to believe is in the original reports, there is a purpose for calling for this document at this time which has not yet been determined, namely that the Court has a judicial responsibility at the close of this case in passing upon my motion for judgment of acquittal to determine whether or not the Department of Justice withheld from the Appeal Board favorable evidence and withheld from the defendant, the registrant, while the matter was proceeding in the Hearing Officer's hearing and before the Department of Justice and even before the Appeal Board certain favorable evidence
104] that would have enabled him to rebut and explain away the unfavorable evidence and also enable him to present affirmative new and additional favorable evidence that otherwise did not appear in his file and, because of that, the Court can't -- It's absolutely impossible for this Court to

discharge that judicial responsibility unless you see the original document anymore than if this Court had before it the issue of whether or not a book review contained all of the favorable statements appearing in the book. The judge has got to pass upon it. The only thing, one of the parties produces the book review and the other one says, "No, I'm not going to show you the book to let you decide it." Now then, that being the situation and also in view of the fact that there is not any national interest imperiled here, the production of this document will not reveal any military secrets; it will reveal no aid or material that would aid or abet the enemies of the United States or imperil the national security of the United States but it pertains only to persons who have been inquired of and who gave evidence concerning a man's sincerity, a citizen of the United States before an administrative agency and that being the case there does not exist any reason legally or morally that would justify the stand that the Attorney General has taken in this case which the United States Attorney must abide by in standing as he does before this Court. And, consequently, I urge the Court that the ruling of the Court be set aside; the Court reconsider the ruling; admit the document; compel the United States Attorney to allow the document to be unsealed and opened and used by me in the making of the defense in this case which I cannot do in a sealed envelope in camera. And, as I said, I don't object to the Court's seeing it but if the Court sees it sometime before this case is over I want to see it and I want to use it.

105]

The Court: If I ever see it, you will see it.

Mr. Covington: That is only for the record. You and I have an understanding about this matter in chambers but that is only for the record so that the appellate court will know I did my duty to this defendant in trying to get this document in evidence.

The Court: If that issue is in this case, and it is, it seems to be certain, I could see no reason for not giving you the benefit of every doubt and giving you the benefit of every bit of information because if an injustice has been done every one of us certainly theoretically wants to find out and it is no good as a theory if it doesn't work out in practice. But I believe that the courts have tied my hands in this regard. If I were the one to pass on it and had the final say I believe

106] I, in cases of this kind, would rule to the contrary.

I believe it may be that the cases don't go as strong as this one here. It is definite. There is no national peril involved; there is a policy of the department involved. I might say, though, that I don't believe an unfair report would be made but that doesn't make it a fact. We are all human; even this fine agency might let an error slip in or some human being might take it upon himself to make a statement that was not based on fact but I think I am bound by those cases and even after your very persuasive presentation I am still going to abide by my former ruling.

Mr. Covington: We have nothing further to interrogate this witness on.

Mr. Douglas: We have no questions.

JIMMY JAMES BOUZIDEN the defendant herein was thereupon called as a witness and testified:

Direct Examination by Mr. Covington:

Q. Now you have got to bear in mind that the judge has
107] got to hear you and that means you are going to have to talk louder than you do normally and these two lawyers sitting here have to hear you and I have to hear you so talk loud enough so they don't have to ask you to say something the second time. What is your full name and your age and your address? A. Jimmy James Bouziden is my name. My address is 817 N. E. 31st Street. My age is 23.

Q. Now then, give the judge briefly your background telling him where you were born and the places where you have resided. A. Well, I was born in Auburn, California, February 21, 1933, and I have resided at Alva, Oklahoma, at Pratt, Kansas, at Wichita, Kansas, and also Colorado Springs.

Q. How long have you been here in Oklahoma City this last time?

A. I've been here approximately two months.

Q. And before you lived here where did you live?

A. Colorado Springs, Colorado.

Q. How long were you in Colorado Springs?

A. I was there approximately - let's see - since about -- about thirteen or fourteen months.

Q. And before that where did you reside?
A. Pratt, Kansas.
Q. And when was it you got married?
108] A. August the 6th, 1955.
Q. And when did you move to Pratt, Kansas?
A. Well, I -- I was living there at the time.
Q. At the time you got married? A. Yes, sir.
Q. And your wife came up there and lived with you then after you got married here in Oklahoma City, is that right?
A. Yes, sir.
Q. Now then, before you moved to Pratt, where did you live? A. I lived at Wichita, Kansas.
Q. And before you lived at Wichita, where did you live?
A. At Alva, Oklahoma.
Q. How long did you stay out there at Alva? A. Well, I was there for sometime at Alva and Aline where I was reared.
Q. That is enough on your background. Your draft board file is in evidence and I am not going to ask you to tell the judge step by step what happened in your case because he is going to read that file and know everything that is in there. There are only about two or three things that I want to ask you about. I call your attention to a letter dated June the 2nd, 1955, signed by Hollis A. Vice, Harold C. Brown and J. W. Haley, I guess it is, Vice and Haley being members of
109] the board and Harold Brown being the secretary. The letter appears in your draft board file and it's addressed to the State Appeal Board. I show you that letter and I ask you to please tell Judge Chandler whether or not you ever saw that letter at any time before you were indicted in this case. (Hands to witness) A. No, sir, I hadn't seen this letter before my indictment.
Q. Now then, when was it -- When was the first time that you ever saw that letter? A. The first time I saw this letter was in my draft board file.
Q. When was that? A. It was about two weeks ago.
Q. How come you to be looking through your draft board file about two weeks ago and where was it? A. Well, I was looking over my file and it was at Alva, Oklahoma.
Q. You went through the file and you saw that letter. Now then you have got a copy, a photostatic copy of that letter in your hand which comes out of Government's Exhibit No. 1.

The Court: Do you mean that you were in the office of the draft board when you were looking at your file?

110] The Witness: Yes, sir.

Q. (By Mr. Covington) Now, I will ask you, did you see that letter at any time before your case was decided the last time by the Appeal Board? A. No, sir.

Q. Did they send you a copy of that letter? A. No, sir.

Q. Now, coming down to that letter, will you please take it and tell the judge whether there is anything in there that you consider to be harmful to you and if you had been sent a copy of you would have answered? A. Yes, sir, there are several statements here. One here is that, "He would not commit himself as to whether he actually preaches before groups of people." Well, I do preach before people.

Q. Well, now, hold on a minute. We understand that we are talking about what the board is saying about what you told them so don't start telling the judge what you do. Just tell what you told the board. A. I told them that I do preach and that I give talks before the congregation and that I give sermons in going from door to door.

Q. Did you tell the local board anything about your
111] talks at the service meetings, sermons before the congregation at the service meetings and the theocratic ministry school that your brother testified about?

A. Yes, I told them that, that I do give these talks.

Q. Now, if you had received that letter, what would you have done in respect to those statements there about your not giving any talks? A. Well, I would have answered these statements, showed them that I do give talks.

Q. All right, that is all. Now let me pass on to another question. In your draft board file there appears a copy of a letter that you wrote to the Hearing Officer of the Department of Justice down here in Oklahoma before your file was transferred up to Colorado in which you requested that you be supplied the original F.B.I. report. Is that correct? A. Yes, sir, I did.

Q. And you stated in that letter specifically your reason for wanting that? A. Yes, sir.

Q. Did the Department of Justice and the Hearing Officer at any time give you that original F.B.I. report as you had requested specifically in that letter appearing in your draft board file and which the Department of Justice had? A. No, sir.

Q. Have you ever at any time seen the original F.B.I.

112] report? A. No, sir.

Q. Would you have used the original F.B.I. report in repsect to either the unfavorable or favorable evidence that may have been in it? A. Yes, sir, I would have answered their comments that they made in this report.

Q. Now then, in this resume that you got did it have any names and addresses? A. No, sir, it did not.

Q. When you got that resume were you ever able to identify any of the persons that are attributed to have made statements referred to in that resume that was sent to you? A. No, sir.

Q. Why couldn't you?

A. Because there were no names, no addresses.

Q. And, could you tell from reading the resume and be able to identify people that had allegedly made statements to the investigators and agents of the F.B.I.? A. No, sir.

Q. Let's get down to this hearing that was held up there in Colorado, in Pueblo, Colorado, on January the 6th, and I show you a part of the draft board file being the recommendation to the Appeal Board and I would like to have you

113] take that and turn to Page 2 and just call to the attention of the Court the parts of that recommendation referring to your hearing and tell the judge your comments about the correctness of those statements beginning there say with, "The Hearing Officer observed that the registrant appeared to be evasive." A. Well, I was at no times evasive but I answered the Hearing Officer's questions directly.

Q. And do you see the next statement there, "He seemed to lack a knowledge of the Bible in general?"

A. No questions were asked concerning the Bible.

Q. And in your discussions with him in answering any questions did you base any of your answers on the Bible?

A. No, sir; because none were asked.

Q. All right. Now then, you see the point in there where he asked you about your drinking habits, he said, "And when pressed" you admitted about the drinking of some intoxicating liquor. Just tell us what, if anything, took place or what was said by you or him in respect to that.

A. Well, he asked me, him, if I was a drinker or had any drinking habits and I told him, "No."

Q. Then what happened? A. Then he brought this up about the resume where it said that I drank a beer. Well, I told him that I did drink a beer now and then.

Q. Well, now, did you ever refuse or evade him on that

114] question of drinking? A. No, sir.

Q. Now, you see that next thing down there about never having been arrested or been in any trouble with the police?

A. Yes.

Q. Did you tell him that you had never been arrested, as stated there?

A. Yes, sir, I told him that I had never been arrested.

Q. All right. Did he bring up this resume about your over-parking charge and running through a stop sign?

A. Yes, he did bring that -- them up and, well, at first he said "Well, these are traffic tickets. Everybody gets them; they are not important."

Q. But now then he states or apparently -- I don't say he states but this Attorney General in Washington tells the Appeal Board that you admitted to this Hearing Officer out there in Pueblo, Colorado, that you had been arrested on October the 4th for running a stop sign. Did you tell the Hearing Officer you had been arrested? A. No, sir.

Q. Did you ever tell him anytime that you had been arrested? A. No, sir.

Q. Well, what did you tell him about that stop sign
115] difficulty? A. Well, I told him that I was issued a ticket for running a stop sign.

Q. What took place about this business of the over-parking? A. Well, he brought them up and I explained them to him; I told him three or four different people drove my car at different times and they were issued the tickets and they never did tell me anything about it but because the car was licensed in my name naturally they were against me.

Q. Did anybody ever haul you into court on account of those? A. No, sir, they did not.

Q. Did the cops come out and arrest you for not showing up at court on account of those parking tickets? A. No, sir.

Q. Did anybody ever take you in custody at any time on any of these transactions that are referred to in this report?

A. No, sir.

Q. Now at this hearing apparently based on what appears in the resume did any questions come up about your uncle being convicted of bootlegging? A. Well, he said that he had read that in the resume but that that wasn't important, that we wouldn't even discuss that.

116] Q. Now in this recommendation that the Attorney General makes to the Appeal Board it is stated in here that at the hearing before the Hearing Officer you did not appear to be able to answer the questions about when you became a member or whether you ever were a member of Jehovah's Witnesses. A. I answered that question directly. I told

him, told it that it was a true and accurate knowledge of the Bible and by our symbolizing of our dedication of baptism that I did become a member of Jehovah's Witnesses.

Q. And then he says that he couldn't verify whether or not you had ever been baptized nor the date. Do you remember that? A. No, sir, I told him that I was baptized in July of 1942.

Q. And this statement also appears in your papers, doesn't it, your questionnaire and in your conscientious objector form that you were baptized in 1942, doesn't it? A. Yes, sir.

Q. Doesn't it also appear in the F.B.I. resume that you were baptized in July of 1942? A. Yes, sir.

Q. Now, what came up about this transferring of this publisher's card from the Pratt, Kansas, unit to Colorado Springs and that it wasn't done until two months before
117] this hearing? A. Well, that was at the time that I had gone to Colorado Springs and I hadn't taken my publisher's card with me but instructions of the Watchtower and Bible Training Society show that it is not necessary for a publisher to transfer his record card unless he is going to be gone for a period of more than three months and I was not going to be gone for over three months before I did take my publisher's record card.

Q. Then it's next stated in there on Page 3 by the Department of Justice that when you were before that Hearing Officer out there in Pueblo that you made a statement to him that you were not against this non-combatant military service.

Q. I told him that I was conscientiously opposed to all military service.

Q. Now what else did you tell him about your attitude towards participating in combatant and non-combatant duty?

A. Well, I told him that I had devoted myself to do the will of Jehoval God and that I was a soldier of Christ Jesus.

Q. Will you turn over there to Page 4 at that next to the last paragraph after looking over there on Page 2 where it says you were evasive and at the end of it he says your general appearance and conduct failed to show sincerity and good faith. Now did you answer his questions and make
118] testimony before him just like you have been doing it here before this judge? A. Yes, sir, I did. I at no times was evasive and at all times he was in charge of the hearing.

Q. Well, now, that brings me down to this. Tell me just what first happened there when you went in before this Hearing

Officer. What did he tell you about how it was going to be conducted? A. Well, he told me that he had some questions that he was going to ask me and that he wanted me to answer those questions.

Q. And is that what you did?

A. Yes, sir, that's what I did.

Q. Is that all that took place the whole time you were there? A. Yes, sir.

Q. His questions that he asked and answers that you gave? A. Yes, sir.

Q. Did you refuse at any time to answer any questions?

A. No, sir, I did not.

Q. Well, did you try to get away from him on any of his questions? A. No, sir.

Q. And have to make him ask you the same thing three
119] times? A. No, sir, I did not.

Q. Or two times. Did he have to ask you two times to get the same information? A. No, sir, he didn't.

Q. Or four times or anymore than one time?

A. No, sir.

Q. Now then, the question came up I think about this baptism business or how you become a member. Did you evade him on that? A. No, sir, I did not.

Q. Now then, you got this copy of this paper you have got in your hand there, that recommendation that the Department of Justice made to the Appeal Board. Could you tell Judge Chandler why it was that you didn't write an answer to that like you did to the F.B.I. resume when you got it, you wrote an answer to the Hearing Officer and he had that at the hearing but why didn't you write the Appeal Board something when the Appeal Board sent you that?

A. Well, whenever I talked to -- Whenever we finished our discussion with the Hearing Officer he said that he would rule in my favor and that he would recommend that I get a conscientious objector's classification. And then he said that he wished me luck when we placed a Watchtower Magazine
in a booklet with this Hearing Officer and then he
120] thanked us and then after him making his report well,
I found it --

Q. (Interrupting) Well, now, here just a minute. Did you get a copy of that Hearing Officer's report that was mailed to the Department of Justice which they refused to produce here? A. No, sir, not until after it was too late for me to --

Q. Well, now, the only question is this: You got a copy of what the Department of Justice sent the Appeal Board; you got that, didn't you? A. Yes, sir.

Q. But now I am talking about what the Hearing Officer wrote down to Washington. Did he send you a copy of what he was going to tell the fellow in Washington? A. No, sir.

Q. And you never saw that at any time, is that correct?

A. No, sir.

Q. So the only thing that you got was after this Hearing Officer had made his report to Washington and after Washington had sent their recommendations to the Appeal Board, then the Appeal Board sent you that thing you have in your hand there, that recommendation? A. Yes, sir.

Q. Now when you got that why didn't you sit down and write out a letter and an argument to the Board of Appeals, that is my question? A. Well, I felt it was too late because he had already sent in this recommendation and that was too late, I felt that -- Well, it was just no use for me to try and do anything because he had ruled against me and the government had ruled against me so I just found it hopeless so I didn't do it.

121] Q. Did you think you could outwhip the government before the Appeal Board? A. No, sir, I just figured I just didn't have a chance. That's why I didn't.

Mr. Covington: That's all.

Cross-Examination by Mr. Douglas:

Q. Mr. Bouziden, you have just been talking about this letter that you got. Did you also get this letter; this is from your selective service file. You would have gotten the original of that letter. Did you get that letter?

A. Yes, sir.

Mr. Covington: What are you talking about? May I take a look at it.

Mr. Douglas: Yes. (Hands to counsel.)

Mr. Covington: Oh, yes, of course, that is admitted He got the original of that and the other letters. There were two letters, one the thirteenth of March and the other --

122] The Court: You had better have it marked

The Clerk: It's part of Plaintiff's Exhibit 1, your Honor.

Mr. Douglas: May it please the Court, this is part of our Exhibit 1.

The Court: All right.

Q. (By Mr. Douglas) Does this letter state in part that:

"Under current selective service procedure before the Appeal Board may again consider your case 'the Appeal Board shall mail to the registrant a copy of the recommendation of the Department of Justice enclosed with a letter informing the registrant that, within thirty days after date of such mailing, he may file a written reply with the Appeal Board concerning the recommendation of the Department.'"

Does that letter -- Do you remember receiving that?

A. Well, I don't remember it exactly.

The Court: He admits he got the letter, though.

Mr. Covington: No doubt about that.

The Witness: Yes, I got the letter.

Q. (By Mr. Douglas) Did you write the Appeal Board concerning this recommendation?

A. That was after my hearing before the Hearing Officer after he had already made his recommendation.

Q. That is not my question. That letter is directed to you by the Appeal Board giving you the notice of giving you the right to reply to the recommendation that was made.

123] A. I'm afraid I don't understand.

Q. You got this, didn't you, this letter here?

A. Yes.

Q. And you know what it said about you. It said that they -- that the Hearing Officer and the Department of Justice finds that the claim -- that your claim was not sustained and that they recommended that the -- that your claim not be sustained by the Appeal Board. You understood what that letter meant, didn't you? A. Yes.

Q. And then they sent you this letter and told you if you wanted to you could reply to that before they considered your case. A. I did answer some of the statements.

Q. Isn't that the letter that you wrote them? (Hands to witness.) A. Yes.

Q. What does that letter say?

A. Just says -- Says:

"I hereby request that my letters and files be considered by the Appeal Board at the next meeting. Thanking you for your cooperation."

Q. Now, Mr. Bouziden, if this letter from the Department of Justice to the Appeal Board is so biased and so prejudiced against you, why didn't you write them and tell them that it was? A. I did. I wrote some of the letters, some
124] of the comments in the resume.

Q. Did you write any more letters after you wrote this letter on April 17th?

A. Well, I don't remember exactly.

Q. This one that you just read from.

A. Well, I can't say for sure.

Q. Did you write any letter after that to them?

A. I can't say for sure.

Q. Did you ever write them and tell them that this report, this letter that you got a copy of, was biased and prejudiced against you and wasn't true? A. I wrote them some of the comments that was in the resume; I answered the resume.

Q. That's not my question. I am talking about after you got this letter of March 2nd, 1956. A. No, sir, because I figured the Hearing Officer had already sent that in, that it was made by the Department of Justice so there just wasn't any use.

Q. The Appeal Board told you if you had any reply to make it. A. Yes.

Q. And you didn't see fit to make any?

A. No, because I just figured it wasn't any use anymore
125] because the Hearing Officer had ruled against me.

Q. Before they could consider your case they had to give you an opportunity to make a reply. Isn't that what they said?

A. Yes.

Q. And you say this report here is unfair? A. Yes.

Q. The one that you have in your hand, that is not true?

A. Well, not all of it. A few of the statements that we

discussed there.

Q. And you say that the resume is not true, is that right? A. Well, some of the statements that was made there are not true.

Q. Some of the statements in the resume are not true? Are y familiar with it? A. Well, with some of it, yes.

Mr. Covington: Where do you start on yours?

Mr Douglas: September 22, 1955.

Mr Covington: What have you got there?

Mr. Douglas: The resume.

Mr. Covington: I would like to follow it along.

Mr. Douglas: Page 4 of this letter of March 2, 1956.

126] Mr Covington: Excuse me. I am trying to find it. All right.

Q. (By Mr. Douglas) O. K. The resume says that: "The registrant was born February 21, 1933." Is that correct?

A. Yes, sir.

Q. "Investigation reflected that the registrant and his brother formerly resided in an apartment house in Wichita, Kansas, which was operated by a woman who was later arrested and convicted for operating an abortion ring on the premises." Is that correct? A. Well, I don't know anything about that.

Q. I didn't ask you that. I just ask you if it is correct. A. I guess it is.

Q. "An official of the Wichita Police Department advised that the woman was the owner and operator of several apartment houses located in one block in Wichita." Do you know whether that is correct or not?

A. Well, she owned a couple of them that I knew of.

Q. "He pointed out that on October 7, 1954, two of the woman's apartments were raided by the Wichita Police Department." Is that correct? A. Well, I suppose it is.

Q. "Stated that five women were found on the premises
127] who were there to arrange for abortions." Do you know whether or not that is correct?

A. Well, I do not know.

Q. "Pointed out that subsequent investigation disclosed that an abortion ring had been operating on the premises for quite some time." A. Well, if they were --

The Court: (Interrupting) What would --

The Witness: (Continuing and interrupting) -- I know nothing about it.

The Court: What would that have to do with this boy?

Mr. Douglas: When you make an investigation of someone you make a neighborhood investigation and determine --

The Court: (Interrupting) Of course, that shows the kind of neighborhood he lived in.

Mr. Douglas: And he said that the resume is incorrect and I am just trying to find out what is in there that is not true.

The Court: I think what he means is that if it implies that he was any party to that, that it was untrue and if he is not a party to it, ought it to be in there?

Mr. Douglas: Well, if it wasn't in there they would object because it wasn't there because we didn't give him a complete report.

The Court: Are you going to ask him if everything in there is true or untrue. Can't you ask him in there what is not true?

128] Mr. Douglas: Just what in there is not true?

The Court: Yes, what he objects to and he can put his finger on it. I think he already has in his direct examination.

Q. (By Mr. Douglas) In this resume you read it and tell me what is not true.

The Court: Just state anything in there that you say is not true or not fair to you.

A. In talking with this woman there they keep mentioning about the things that she done. Why I knew nothing of the things that she had done.

Q. Is that what -- Do they say in there that you did know what she did? A. No.

Q. All right. Anything else in there that you think is incorrect or untrue or slanderous of you that is not true?

A. Right down here, "An official of the Wichita Police Department advised that a traffic warrant dated August 9, 1954, was issued against the registrant for failing to appear in traffic court to answer a charge of over-parking his car." I never received no traffic warrant to appear in court because of this.

Q. , you know whether or not one was issued?

129] A. No, sir, I do not.

Q. Well, you don't know whether that is true or not, do you?

A. No, sir, but it states here that it was.

Q. Have you checked the records of the police department up there to find out whether or not it was? A. No, sir.

Q. Anything else? A. And there is the other traffic warrant that was dated March the 11th, 1954.

Q. "Charging the registrant with failure to appear in traffic court concerning an illegal muffler on his automobile"?

A. Yes, sir.

Q. Do you know anything about that warrant?

A. No, sir.

Q. Do you know whether or not it was issued?

A. No, sir.

Q. Do you know whether or not you had an illegal muffler on your automobile? A. No, sir.

Q. What kind of muffler did you have on there?

130] A. Well, I guess a standard muffler.

Q. Didn't have any holes in it, any unusual type muffler or pipes or anything? A. No, sir.

Q. In other words, you don't think it's your car?

A. Right down here, "Records at the Pratt, Kansas Police Department reflect that the registrant was arrested on October 4, 1954, for running a stop sign." And I was never arrested, but I was issued a ticket for running the stop sign.

Q. If the records of the Pratt, Kansas Police Department show that you were arrested for running a stop sign and that you were belligerent, would those records be correct or incorrect? A. They'd be incorrect.

Q. Were you stopped by a policeman for running a stop sign in Pratt, Kansas? A. Yes, sir.
Q. Were you belligerent? A. No, sir.
Q. Were you courteous? A. Yes, sir.
Q. Did the policeman think you were belligerent?
131] A. He didn't seem to be.

Mr. Covington: I will object to that. It is argumentative.

Q. (By Mr. Douglas) Anything else in there?
A. This statement here, "The relatives stated that the registrant came and left Wichita quite frequently and probably never lived in the area long enough to establish himself with a Jehovah's Witness congregation." Well, I was established at the congregation there at the Central Unit in Wichita, Kansas, where I was enrolled in the theocratic ministry school and attended the meetings there.
Q. Let me see here. This is one of your relatives, isn't it? A. Says a relative so I guess it is.
Q. "Advised that the registrant, at an early age, came to live with her family at Alva, Oklahoma," and that she and you had been raised together in the same house. Do you know who this is? A. No, sir, but this is down --
Q. (Interrupting) "She believed the registrant was of excellent character and reputation and stated that he was a member of Jehovah's Witnesses and known to be a member in good standing of the faith. He was believed to be sincere in his religious beliefs pertaining to military service. It is to be noted that this relative was not able to provide the registrant's former addresses while he resided in Wichita.
132] The relative stated that the registrant's associates in Wichita were restricted to his relatives and particularly his brother." This is the same woman? A. I guess it is.
Q. Do you have any idea who it is? A. No, sir, I do not.
Q. How many female relatives were you raised together with?
A. Well, I have several relatives because since --
Q. (Interrupting) In Wichita that might have been interviewed? You've got a good idea who it is, don't you?
A. No, sir, I do not.
Q. You don't? Why?

Mr. Covington: It says Alva, not Wichita, counsel

Mr. Douglas: This was a result of the Wichita investigation and she just said that they were raised together at Alva.

Mr Covington: Well, I am sorry if I misconstrued that.

A. I don't know.
Q. (By Mr. Douglas) Anything else, anything with this resume? A. (No audible response.)
Q. What page are you on now? A. Nine.

133] The Court: How long is that? Are you about through with it, son?

The Witness: Let's see.

Mr. Douglas: One more page, your Honor, after Page Nine.

The Witness: A couple of more pages.

Mr Covington: What page are you working on now, nine?

A. Nine. Another statement here the draft board official gives. It's stated that I was quite confused because he wouldn't allow my brother to sit in on this hearing. Well, well I was not confused. I asked if my brother could sit in on the hearing and they said, "No," and I said, "O.K."
Q. (By Mr. Douglas) You think then that that man was mistaken? A. Yes, sir.
Q. And that perhaps that shouldn't be in this resume?
A. Yes, sir.
Q. What else? A. Also the statement here where it says, "The local board offered the registrant a 1-O classification as a conscientious objector to do hospital work." Well, they did offer me that in words but not in any kind of a classification.
Q. It also says here: "But the registrant refused to
134] accept such a classification, claiming to be a minister in Jehovah's Witnesses and wishing a 4-D classification." Is that correct?

The Court: Would you like to take it now? Would you like to have that classification now?

The Witness: I would have to consider it.

Q. (By Mr. Douglas) Is the rest of that sentence correct?
A. Well, I refused to accept such a classification because I had never been offered it except in words.

The Court: I am in effect offering it to you now. Do you want it?

The Witness: I don't know. I'd have to consider it.

The Court: You let me know by the completion of the trial.

Q. (By Mr. Douglas) Is that the same thing you told the Board up there? A. What?
Q. That you don't know whether you'd want that classification? A. No, sir, I just made the comment to them that I'd never been offered one and I said nothing further.
Q. What else is in there? A. (No audible response.)
135] Q. Are you through with that report now? A. Yes, sir.
Q. Other than what you have mentioned there, is there anything in this untrue? A. No, sir, not that I know of.
Q. In other words, out of approximately a six page summary -- resume report there is nothing in there except what you have stated?

Mr. Covington: I object to that.

The Court: Yes.

Mr. Covington: (Continuing) That is argumentative.

The Court: Yes, that has already been answered.

Q. (By Mr. Douglas) When did you first get a copy of this report? A. It was after the hearing.
Q. Of this resume? A. Not -- Oh, the resume?
Q. You got that before the hearing, didn't you?
A. Yes, sir.
Q. You got that back in 1955, didn't you, December sometime of '55, November? A. I don't remember the exact date.

The Court: How long before the hearing did you get it?

136] A. (No audible response)

The Court: What do your records show?

Mr Covington: I can give you the exact date.

The Court: Was it about a month or two months?

Mr Covington: Your Honor, it was within thirty days before I will give you the exact date if you will permit me.

Mr. Douglas: He got that copy out at Crodell, Oklahoma, and requested later that the hearing be held up in Colorado and it was transferred up there so I think it was possibly in excess of thirty days.

Mr Covington: I have got the hearing -- the notice of hearing here if I can just find it. On November the 22nd, 1955, is the date that the Oklahoma Hearing Officer mailed it to him.

The Court: He had ample time before the hearing.

Mr. Covington: There is no doubt and the file shows he did answer the resume. He mailed a letter to the Hearing Officer.

Mr. Douglas: The file shows that he filed a letter setting out certain things that he objected to.

The Court: All I wanted to know was if he had had ample time.

137] Q. (By Mr. Douglas) What is your occupation at the present time? A. I am a painter and a minister.
Q. Who are you employed by?
A. Well, Mr. Vernon Feuerbacher.

Mr. Covington: How do you spell that, F-u-e-a-r-b-a-c-h-e-r, is that it?

The Witness: I don't know the exact spelling of that name. F-e-u-e-r-b-a-c-h-e-r I think.

Q. (By Mr. Douglas) What type of painting do you do?
A. House painting.
Q. House painting. Interior and exterior both?
A. Yes, sir.
Q. How much do you make an hour? A. Oh, a dollar and seventy-five cents, approximately, a dollar and seventy-five cents.
Q. How many hours a week do you work?
A. Approximately forty hours.
Q. Forty hours. Don't you ever do any other type of work?
A. Sometimes.
Q. How long have you been employed by this gentleman?
A. About three weeks.
Q. Who were you employed by before? A. I was working
138] for my brothers in Colorado Springs, Colorado.
Q. But you have been down here about two months though, is that right? A. Yes, sir.
Q. When were -- The first four or five weeks you were here you weren't working, is that right?
A. I was working very little.
Q. Now you have steady employment?
A. Well, for the present.
Q. Before that you worked for your brothers for about thirteen or fourteen months in Colorado Springs? A. Yes, sir.
Q. Before that, who did you work for? A. I worked for Mr. Anelty and Dick Whitker at Pratt, Kansas.
Q. Mr. Anelty is some relation to you, isn't he?
A. He's a cousin.
Q. Before that you worked at Wichita and Alva doing the same thing? A. Yes, sir.
Q. Where you were living in May of 1955 when the local board had this hearing on your classification?
A. May of '55 if that is the hearing --
139] Q. (Interrupting) That's the hearing that you were referring to in that letter that you said they had written, this letter that wasn't the truth. That's the hearing I am talking about.

Mr. Covington: Well, it doesn't refer to the hearing, counsel.

Mr. Douglas: Well, I was trying to get the hearing fixed in his mind as the date that the letter was an outgrowth of the hearing.

Mr. Covington: It's May 23, 1955, according to the draft board records, is the date of the hearing according to the memorandum.

The Witness: Evidently I was living in Pratt, Kansas.

Q. (By Mr. Douglas) You were living in Pratt, Kansas, and you were working up there as a painter? A. Yes, sir.
Q. How many hours a week were you working?
A. Approximately forty hours.
Q. You were practicing ministry at the same time?
A. Yes, sir.
Q. In Pratt, Kansas? A. Yes, sir.
Q. And you were an active minister in Pratt, Kansas, at that time? A. Well, at the time I was also at Alva, Oklahoma, and I was also visiting my fiancee at times here in Oklahoma City and whenever I was at Alva I would take part in services there.
140] Q. How was it that an official of Jehovah's Witnesses in Pratt said that, "He was unable to locate the registrant's report card reflecting his church activity but recalled that the registrant had a rather poor attendance for his theocratic ministry school meetings"?
A. Well, for attendance of the theocratic ministry school I was at other places at the time.
Q. You were at other places? A. Yes, sir.
Q. Practising your ministry in other places?
A. Yes, wherever I was at I would attend meetings.
Q. As a matter of fact, you told that board that the last few months you had spent nine or ten hours all told working for the church, didn't you?
A. I don't remember exactly what I did tell them.
Q. That's about all the time you spent, wasn't it?
A. No, sir.
Q. You really got active here later, isn't that right?
A. No, sir, I have been practically doing about the same.
Q. You have been doing about the same? A. Yes, sir.
141] Q. You were living in Colorado Springs at the time of this hearing, is that correct?
A. With this hearing before whom?
Q. This hearing before Mr. Evenson here..
A. Yes, sir, I was.
Q. You were active in the North Unit of that church there, is that correct? A. Yes, sir.

Q. Well, this letter from the Department of Justice which we have all been talking about, tell me whether or not this is true --

A. (Interrupting) Where is it located at?

Q. On Page 3, the first paragraph, about the middle of it. I don't know exactly what sentence it is. It says, "When questioned as to his duties as a minister, he stated that he was a company publisher which meant that he was supposed to attend the meetings and take part in the meetings that he gives talks once in a while at the theocratic minister's school that he reads Scriptures in meetings when asked to do so, and that he goes from house to house as directed. He admitted that he had no duties which are peculiar to his position, but that the other ministers of the North Unit do the same."

142] Mr. Covington: I am sorry. I have lost you. Where are you and what thing are you reading from?

Mr. Douglas: Reading from the letter, Page 3 of the letter of March 2nd, 1956, and about middle ways in the first paragraph.

Mr. Covington: That is the Attorney General's letter?

Mr. Douglas: Yes.

Mr. Covington: Page 6?

Mr. Douglas: Page 3. It's the letter of March 2nd. 1953.

Q. (By Mr. Douglas) Now, is that true or is that not true? A. Well, would you please repeat it?

Q. You have the letter there. Didn't you follow me when I was reading it? Starting here with (indicating), "When questioned as to his duties as a minister -- " Do you find the place? A. No, just not yet.

Q. Right in here someplace (indicating). A. Yes, sir.

Mr. Covington: "He admitted that he has no duties which are peculiar to his position," is that where you are?

Mr. Douglas: That's right, part of it, yes sir, but it's up above there. It's about five or six lines above that is where we are starting.

143] Mr Covington: I have it now.

The Witness: What I was referring to here was that I had no -- I wasn't a servant in that congregation.

Q. (By Mr. Douglas) Have you ever served in any congregation? A. A servant?

Q. Yes. A. No, I was just a congregation publisher.

Q. How long have you been a minister?

A. Since 1940 when I became acquainted with the --

Q. (Interrupting) 1940, that's seventeen years, is that right? A. Well, it was '42 whenever I was baptized.

Q. That is fifteen years? A. Yes, sir.

Q. And you are just like you were when you started, is that right? A. Well --

Q. (Interrupting) You are a company publisher or a congregation publisher, is that what you call it?

A. Yes, sir.

Q. And you have never taken part in any other duties as any servant in the church, is that correct?

A. No, sir; nor sir, I haven't.

144] Q. In fifteen years? A. Yes, sir.

Q. Now, referring to this letter again, at the point where we stopped it says, "When asked about the number of hours spent in ministerial duties, he stated that he spends about three or four hours per week." Is that true?

A. Yes.

Q. The man asked you that question?

A. The Hearing Officer?

Q. Yes. A. Yes.

Q. And you gave him that answer? A. Yes.

Q. That is all the time that you were spending?

A. Well, that's the time that I spent in door to door work but I did explain to him that I had the personal study -- that I studied and all in the attendance of meetings.

Q. Do you consider your personal study that you do for your own as carrying out your duties as a minister?

A. Well, yes, I need to do that in order to prepare for my ministry.

Q. And I believe you testified that you didn't say that you weren't -- Well, let me, I'll ask it this way. This next paragraph, "With reference to non-combatant service,

145] registrant stated that he was not against it as such but felt that he could not participate in it because

it would interfere with his ministerial duties."

A. I told the Hearing Officer that I was conscientously opposed to any type of military service and that I was supposed to do the will of Jehovah God and that I was a soldier of Christ Jesus and the Bible shows that we are to obey God rather than man where there is a conflict.

Q. How many hours a week are you spending now in your ministerial duties? A. Three or four.

Q. Three or four. Is there any guide or classification in your church lower than yours? I mean is there anybody that is not a --

A. (Interrupting) Company publisher?

Q. At least that? A. Well, there is that have put in the time but they haven't been baptized. They are not considered publishers. I mean they publish --

Q. (Interrupting) In other words, anybody who has been baptized is a company publisher?

A. Yes, sir, and it's by that baptism that they symbolize their dedication to do God's will.

Q. How many members do you have of your sect; do you
146] have any idea? A. At this unit where I attend?

Q. In the whole world over, in the United States.

A. Approximately two hundred and fifty thousand in the United States or more.

Q. Would you have any idea how many of those are company publishers? A. No.

Q. Most of them are, though, aren't they?

A. Yes, there is a good percentage of them are.

Mr. Douglas: I believe that's all.

Redirect Examination by Mr. Covington:

Q. Mr. Bouziden, you have that F.B.I. resume that Mr. Douglas has been questioning you about? A. Yes, sir.

Q. And he asked you to read through there. I notice he didn't direct your attention there to that paragraph at the beginning of the fifth line down from the top on Page 10 where it makes reference to your uncle being convicted of bootlegging and about what the neighbors in Alva thought about you not being sincere because your uncle had been convicted of bootlegging. Now, did you mean to tell the judge you think that is fair to have the Appeal Board consider that?

147] Mr. Douglas: That is leading and suggestive.

Mr. Covington: Well, after all I am calling it to his attention.

The Court: I will let him answer. It is leading and suggestive but I will let him answer.

Q. (By Mr. Covington) Go ahead.
A. Well, no, it isn't.
Q. The fact that your uncle was convicted of bootlegging, does that affect your belief as one of Jehovah's Witnesses? A. No, sir, because after -- Well, after I'd learned the truth and also after he had been converted with Jehovah's Witnesses he no longer continued doing this but he quit. After 1940 he quit doing this and that is when that I became acquainted with Jehovah's Witnesses and then '42 whenever I was baptized.
Q. Do you think that had anything to do with your conscientious objections then, what that F.B.I. report shows in here? A. No, sir.
Q. Now then, you were asked about the unfair and the untrue things. Do you know whether this thing has got all the favorable evidence that the people that know you
148] that were talked to, do you know whether that has got all of the favorable evidence in there?
A. No, sir, I do not.
Q. You wrote a letter to the Hearing Officer of the Department of Justice that if they'd give you the original report of the F.B.I. report you could make use of the other favorable evidence, didn't you? A. Yes, sir, I did.
Q. And do you still now take the same position that the only way you can tell whether there is more favorable evidence that should have been called to the Appeal Board's attention is to look at that original report? A. Yes, sir.

Mr. Covington: That is all.

Mr. Douglas: I have some more questions but I have got to find something before I can ask them.

The Court: I thought you were through with this witness.

Mr. Douglas: Well, I can't find them. I'll go ahead

anyway.

Recross Examination by Mr. Douglas:

Q. Now, you testified a moment ago about this resume'
149] and your counsel just asked you a question about if you felt that that report was fair if it said you couldn't be sincere because your uncle was a bootlegger. Do you recall that question? A. I don't remember the question.

Q. Do you recall your counsel here, Mr. Covington, asking you a question a few minutes ago about this report being fair?

A. Yes.

Q. And in that the report said that you couldn't be considered sincere because your uncle is a bootlegger. Do you recall his asking about that?

A. Yes, I recall him asking that.

Q. Does this say that you weren't sincere because your uncle was a bootlegger?

Mr. Covington: I think it does if you will look at Page 10 there.

The Court: It shows on its face what it says and that report is in evidence, isn't it?

Mr. Covington: Yes, it is, your Honor.

The Court: So it speaks for itself.

Q. (By Mr. Douglas) I would just like to read this one little thing: "That most persons interviewed believed that the registrant's home environment, being raised by an uncle who was a convicted bootlegger, is inconsistent with his claim of being a conscientious objector." It does not
150] say that he wasn't sincere because his uncle was a bootlegger. Now you got a copy of this and you wrote that Hearing Officer a letter, didn't you? A. Yes.

Q. And you know all that is good about yourself, don't you? A. Yes, sir.

Q. Why didn't you tell him something good about yourself when you wrote him the letter? A. I did.

Q. All you did in that letter was just tell him what was wrong about this, isn't that right?

A. No, sir, I answered several statements in there.

Q. Well, I was looking for that letter before I asked you the questions. I guess I am going to have to find it.

The Court: Is it in evidence?

Mr Douglas: Yes, sir, if the Court wants to review it later. It's addressed to Mr. Lockwood Jones, Hearing Officer at Cordell, Oklahoma.

Mr Covington: That is all, Mr. Bouziden, you can step down but I notice that the Hearing Officer is still here and before I finish my part of the case I would like to renew my request. I know what the Court has ruled but at least I want to renew my request to have those documents that we asked the Hearing Officer to produce to be put into evidence. I mean the Court has ruled on them. I am just asking the Court to reconsider the ruling again.

151] The Court: I haven't ruled on those. I reserved my ruling until later. I will sustain the objection to them.

Mr Covington: The Hearing Officer's report now has been ruled on.

The Court: I am not certain that I am right about it but, under the cases I have read, I think it is the ruling that I have to make with reference to the Hearing Officer's letter to the Attorney General and his notes.

Mr. Covington: Yes, your Honor.

Mr Camp: And the F.B.I. report.

Mr. Covington: That was ruled on.

Mr Camp: And the ruling is now exactly what?

The Court: Sustained.

Mr. Camp: Our objection is sustained.

The Court: The motion to quash is --

Mr. Covington (Interrupting) Motion to quash is sustained?

Mr. Camp: Then we may withdraw these matters that have been marked?

The Court: Well, they are a part of the record anyway and if I were you I'd like to have the whole thing in. They are part of the record in any event, but they are not part of the evidence in this case

152] Mr. Camp: Then it's the Court's ruling that they be sealed in evidence so that they may be submitted to the Appellate Court?

The Court: Well, if the Appellate Court wants to look at them they can. They'll be there for them.

Mr. Camp: In that connection could we have permission to duplicate these as they are the only copies that we have available?

We'll send the Department of Justice, substituting photostatic copies of these documents that the Court has received in evidence in camera and while we are talking about this I believe that perhaps we have inadvertently said that the motions are -- I mean the motion to quash the subpoena is sustained. I suppose that what has actually happened here --

The Court (Interrupting) I am not paying any attention to the motion. It came up in court here after trial and I ruled on the evidence so the motion is not important.

The Covington: The motion is to this date unruled on in other words?

The Court: Yes, it's unruled on and it could be withdrawn or sustained. It becomes unimportant I think.

153] Mr. Covington: I think so, too, in view of the fact that it has gotten this far. The stuff is already in the record in camera at least. Then we couldn't hold that the motion is quashed for if that is true there would be no right to have it at all, if it is sustained, and the subpoena is

quashed we wouldn't have any of it in.

The Court: Did the Government make the same tender to the Court regarding the F.B.I. report for the record or not? I am going to rule the same way on it as I have ruled -- In other words, if they don't go in, why they don't go in for any purpose as far as I am concerned.

Mr. Camp: I don't recall whether we specifically made that.

The Court: Whichever way you want it. You might want that; it might affect the decision of the Court of Appeals on the matter as to whether or not you tendered them for the perusal of the Court.

Mr. Camp: We are willing to make that offer.

The Court: All right. And the same ruling applies to all of them by agreement of counsel and approval of the Court.

Mr. Covington: And the same statements by counsel.

The Court: Yes, on each side and by the Court with reference to them.

154] Mr. Covington: Yes, sir.

Now, your Honor, that being the situation and the condition of the record and there being no further evidence the defendant rests his side of the case.

Mr. Douglas: May it please the Court, the Government would like to call one witness in rebuttal.

The Court: All right.

MAURICE A. EVENSON was called as a witness by the plaintiff to rebut the evidence of the defendant and testified:

Direct Examination by Mr. Douglas:

Q. State your name, please.
A. Maurice A. Evenson.
Q. You are the same Maurice A. Evenson who testified here a short time ago? A. Yes, sir.
Q. Mr. Evenson, did you conduct the hearing in Pueblo, Colorado, in this case? A. That's correct.
Q. The defendant here was present? A. Yes.
155] Q. As well as his wife? A. Yes.
Q. And his brother? A. That's correct.
Q. You have been here in the courtroom today?
A. Yes, sir.
Q. And you have heard the testimony of his brother and his wife? A. That's correct.
Q. Mr. Evenson, the defendant testified a short time ago that after he was leaving the hearing that you informed him that you were going to sustain his claim as a conscientious objector and wished him good luck. Now as far as the good luck part, that is unimportant but did you tell him that you were going to sustain his claim as a conscientious objector?
A. I certainly did not.

Mr. Douglas: That's all.

The Court: All right. Call your next witness.

Mr. Douglas: One more question.

Q. (By Mr. Douglas) He also stated that you never questioned him concerning the Bible, is that correct?
A. That is not correct.

Mr. Douglas: That is all.

156] Cross-Examination by Mr. Covington:

Q. Now then, if you say that he is incorrect about that and you did question him about the Bible, just what did you say to him about the Bible and what question did you ask him about the Bible and what part of the Bible did you ask him about? A. I asked him to quote me from the Scriptures those portions which would sustain his position as being a conscientious objector. He has stated -- Then he quoted a Scripture from John to the effect that Christ's world is not of this world or words to that effect. I asked him if he had

other Scriptures to sustain his position to show that he is conscientious in objecting to military service. He could not quote any other Scriptures to me. He sat on the stand and hesitated, looked at his brother but he could not quote any other Scriptures to me and then after giving him a sufficient time so he could answer if he wanted to, or knew the answers, I then asked him what about the ten commandments or some of these others that the boys usually quote to me and they recognized them as being Scriptures but we certainly did go into the matter of the Scriptures.

Q. Now then, did he not tell you that he quoted the Scriptures, that he was a soldier of Christ?

A. Not at that time, no.

157] Q. Well, I am talking about at any time.

A. Yes, when I asked him about his being opposed to combatant service he made the statement that he was a soldier of Christ.

Q. Just how much Bible do you think a man must know before he is entitled to your opinion to be classified as a conscientious objector?

Mr. Douglas: We object to that. That is going into the Hearing Officer's thought processes, his reasoning that he used.

The Court: I think it's argumentative.

Q. (By Mr. Covington) Did you make notes of these questions that you have just got through telling the judge you asked about the Bible? A. You mean at the time?

Q. Yes. A. Of the hearing?

Q. Yes. You told me when I put you on the stand that you made notes. Do you recall that, as the hearing progressed?

A. That's correct.

Q. Now then, I'm asking you: Do your notes contain a memoranda about this question on the Scriptures?

A. Yes, it does.

158] Mr. Covington: All right, then, I call upon the Court to make the witness produce the notes and I want to use them for the purpose of cross examining this witness.

Mr. Douglas: May it please the Court, these notes are in evidence for the Court's inspection. The Court has already

ruled on their admissibility

Mr. Covington: I am asking now that that be used for the purpose of cross examining this witness and his credibility as the issue is now before this Court and the documents are in evidence sealed up in an envelope and I want to use them to question him and I also want to use the report that he sent in to the Department of Justice. those two documents that are now sealed, I want them produced so that I can confront this man with them and cross examine him about whether or not what he is now telling the Court is correct. His credibility is at issue.

Mr. Douglas: He made no basis for impeachment for this witness.

Mr. Covington: I think that if my hands are not tied I think I might very well do it before I get through in this case.

Mr. Douglas: The Court has those documents.

The Court: Do you want to object to him doing that? I am inclined to think he must do it now to test his credibility. You have made it admissible.

Mr. Camp: I don't believe that -- If the Court is asking whether we object, we certainly do. The credibility that is being impeached here is the defendant's credibility, not this witness's and there is no basis, no predicate laid for any impeachment of this witness under any circumstances.

159] Mr. Covington: Do you want to ask that this man's testimony be stricken out of the record?

Mr. Camp: No, sir.

Mr. Covington: All right, then, I don't see how in the world you can stand up here and tell this man that this man's credibility is not at stake. He has given testimony against the defendant's veracity. Now the judge is going to have to decide whether that man is lying or my client is lying.

Mr. Camp: The judge has the information available for

his use to determine that fact.

The Court: I am not going to take the responsibility of saying what is in there unless it is opened for everybody to see. I can understand that that would be proper where there was danger to our country from our enemies but not in a case like this where there is no danger involved. Therefore, I am not going to take that responsibility and I don't think that it would be proper for me to. I don't think that I should be requested to do so. If this man is entitled to these papers he is entitled to have them for all purposes and, if the Government wants him to have them, fine and, if they don't, I am going to sustain the Government's objection.

160] Mr. Douglas: We do object.

The Court: All right. I sustain your objection.

Mr. Covington: That is all right. I can't finish my cross examination unless and until I have the two documents called for and I understand the Court has sustained the objection and I can only rest on the record by stating that I take an exception.

The Court: The reason I am doing it is because of the Government's contention of the nature of those instruments. Under the ordinary rules of evidence you are correct and if I am wrong about the nature of the instruments and the effect of the rule of the Attorney General's office, then I am wrong about this and, for that reason, I am sustaining the objection. Otherwise, I wouldn't because I think under the ordinary rules of evidence you are correct and that you are entitled to test his credibility.

Anything further?

Mr. Covington: I can't go any further, your Honor, in view of the ruling.

The Court: All right.

Mr. Douglas: Nothing further.

The Court: Both sides rest.

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* * * * *

170] The Court: I have gone over all of these matters in chambers at the pretrial of this case and I studied it overnight and read some of the cases. There are some points that you have raised that are very serious ones and important ones but I have come to the conclusion that I have to overrule your motion and find the defendant guilty

Mr. Covington: We are now ready for sentence.

The Court: What is the period of time --

171] Mr. Covington: (Interrupting) You mean punishment.

The Court: What is the period of time that if he had been drafted he would have had to serve?

Mr. Covington: Twenty-four months. But the statute reads five years maximum and ten thousand dollars fine. That is the limit. Anything under that period.

The Court: Do you know of any reason why sentence should not now be pronounced?

(Reporter's Note: No audible response.)

The Court: Do you care to say anything further?

(Reporter's Note: No audible response.)

The Court: It is the judgment and sentence of the Court that you are sentenced to imprisonment in the custody of the Attorney General for a period of two years.

* * * * *

Filed May 17, 1957.

Bouziden vs. United States of America

Designated Portions of Plaintiff's Exhibit 1,
Selective Service System File.

Registration Card.

* * * * *

Feb. 21, 1951 /s/ Alice P. Morris
(Date of registration) (Signature of registrar)
Registrar for local board 80 Alva, Oklahoma
(Number) (City or county) (State)

Selective Service System.

Classification Questionnaire.

Selective Service No. 34 80 33 15 Date of mailing February 21, 1952

Date of birth: Name:
February 21, 1933 Bouziden, Jimmy James
(Month) (Day) (Year) (Last) (First) (Middle)
Address: 116 Maple Street
(Number and street or R. F. D. route)
Alva, Woods County, Oklahoma
(City, town, or village)(Zone)(County)(State)

Local Board No. 80
of Woods County
Mar 4 - 1952
American Legion Hut
Alva, Oklahoma
(Name Of Local Board)

* * * * *

Series VI.--Minister, Or Student Preparing For The Ministry

Instructions.--Every registrant who is a minister or a student preparing for the ministry shall complete the statements in this series that apply to him.

Bouziden vs. United States of America

1. (a) I am a minister of religion.
(am, am not)

* * * * *

(c) I have been a minister of the Jehovah's Witnesses
(Name of sect or denomination)
since July 1942
(Month)(Day)(Year)

(d) I have been formally ordained.
(have, have not)

* * * * *

2. (a) I am a student preparing for the ministry under
(am, am not)
the direction of Watchtower Bible & Tract Society in a theo-
(Name of church or religious organization)
logical or divinity school.

(b) I am attending the Central Unit of Jehovah's
(Name of theological or divinity school)
Witnesses located at Wichita, Kansas.

3. I am a student preparing for the ministry under the
(am, am not)
direction of Watchtower Bible & Tract Society, pursuing a full
(Name of church or religious organization)
time course of instruction leading to my entrance into
_____ located at _____.
(Name of theological or divinity school)
in which I have been pre-enrolled.

Series XII.--Citizenship.

Instructions.--Every registrant shall complete the statements numbered 1, 2, 3, and 4 in this series. Every registrant who is not a citizen of the United States shall also complete the statement numbered 5 when applicable.

1. I was born at Auburn Calif.
(Town or county)(State (Country)
on Feb. 21, 1933
(Date)

2. My race is White [x]; Negro [ ]; Oriental [ ]; Indian [ ]; Other _____ (Specify)

3. I am a citizen or subject of U. S. A. 4. I have not (Country) (have, have not) filed a Declaration of Intention to become a citizen of the United States.

* * * * *

Series XIV.--Conscientious Objection To War

Instructions.--Any registrant who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form shall sign the statement below requesting a Special Form for Conscientious Objector (SSS Form No. 150) from the local board.

By reason of religious training and belief I am conscientiously opposed to participation in war in any form and for this reason hereby request that the local board furnish me a Special Form for Conscientious Objector (SSS Form No. 150) which I am to complete and return to the local board for its consideration.

Jimmy James Bouziden
(Signature)

* * * * *

(Registrants Will Make No Entries on This Page)

Date	Minutes of Actions by Local Board and Appeal Board	Vote Yes	Vote No
3/4/52	Received completed Questionnaire. Mailed Form No. 150. (Special Form for Conscientious Objector) to Registrant. Registrant asking for IV-D classification.		
3/11/52	Received completed Form 150 (Special Form for Conscientious Objector.)		
4/2/52	Classified to Class I-A	2	0
4/3/52	Mailed Form #110 (Notice of Classification)		

4/11/52	Registrant filed written request for personal appearance.		
4/11/1952	April 16, 1952, at 7:00 P.M. fixed for registrant to appear before Board at its office, American Legion Hut, Alva, Okla.		
4/11/1952	Mailed notice of time and place for personal appearance and copy placed in file.		
4/16/52	Registrant appeared-presented additional information		
4/16/52	Classified Class I-A	3	0
4/17/52	Summary of additional oral information filed		
4/17/52	Mailed Form #110 (Notice of Classification)		
4/28/52	Registrant submitted written request of Appeal to State Appeal Board.		
4/29/52	File forwarded to Appeal Board.		
5/21/52	Appeal Board for the Selective Service System in the Western Federal Judicial District of the State of Oklahoma determined that registrant should not be classified in either Class I-A-0 or Class I-0, under the circumstances set forth in sub-paragraphs (2) and (4) of paragraph (a) of Section 1626.25 of the Selective Service Regulations, and forwarded registrant's file to the United State District Attorney for an advisory recommendation by the Department of Justice [illegible] conscientious objection cla m to [illegible] non-combatant military training and service.	5	0
12/29/52	Received File from State Appeal Board		
(12/17/52)	Appeal Board Classified registrant in Class I-A	5	0
12/29/52	Mailed Form No. 110 (Notice of Classification) (showing vote of Appeal Board.)		
2/25/53	Mailed Form 223 (Order to Report for Armed Forces Physical Examination) on March 11, 1953		
3/11/53	Forwarded to armed forces Examining and Induction Station.		

Bouziden vs. United States of America

3/18/53	Mailed Form No. 62 (Certificate of Acceptability) registrant acceptable.		
5/8/53	Mailed Form #252 (Order to report for Induction) May 25, 1953		
5/25/53	Forwarded to Induction Station.		
5/27/53	Received copy of letter from Induction Station that Registrant refused to submit to Induction.		
5/27/53	Mailed original and copy Form #301 (Delinquent Registrant report) to U. S. Attorney and one copy fo State Hdqurs.		
5/28/53	Received all papers back from Induction Station. Registrant found acceptable, but refused to submit to Induction.		
6/3/53	In accordance with letter received this date from State Headquarters, forwarded entire file to State Headquarters. (Registration Card forwarded also)		
6/11/53	Received entire file back from Headquarters. Photostatic copies of this file were made by Hdqurs.		
10/27/53	Forwarded Registrant's file to State Headquarters.		
11/9/53	Received registrant's file back from State Headquarters.		
3/7/55	Forwarded registrant's file to State Headquarters.		
3/28/55	Registrant's file received back from State Headquarters.		
4/21/55	Local Board advised that prosecution in the case of registrant has been dismissed. State Director requests board to reopen and consider anew classification as provided in Sect. 1625.3(a) of SS REgulations.		
4/29/55	Cancelled Order to Report for Induction. Copy of letter in file.	3	0
5/4/55	Classification reopened. Classified I-A	3	0
5/5/55	Mailed SSS Form 110 (Notice of Classification)		
5/16/55	Registrant filed written request for personal appearance.		
5/18/55	May 23, 1955 at 7:30 P.M. fixed for		

	registrant to appear before board at its office, American Legion Hut, Alva, Okla.		
5/18/55	Mailed notice of time and place for personal appearance and copy placed in file.		
5/23/55	Registrant appeared-presented additional information.		
5/23/55	Summary of additional oral information filed.		
5/25/55	Registrant again Classified I-A	3	0
5/26/55	Mailed Form 110 (Notice of Classification)		
6/1/55	Registrant filed written appeal to the State Appeal Board.		
6/2/55	Forwarded file to State Appeal Board.		
7/9/55	Appeal Board for the Selective Service System in the Western Federal Judicial District of the State of Oklahoma forwarded registrant's file to the United States District Attorney for an advisory recommendation by the Department of Justice relative to registrant's conscientious objection claim, under the provisions of Section 1626.25(a)(2) of the Selective Service Regulations.	5	0
6/21/56	Received file back from State Appeal Board.		
6/21/56	Appeal Board classified registrant in Class I-A by a vote of 4 to 0.		
6/21/56	Mailed SSS Form 110 (Notice of Classification) showing appeal board vote.		
7/11/56	Mailed SSS 252 (Order to Report for Induction) July 24, 1956.		
7/24/56	Forwarded to Induction Station.		
7/30/56	Received letter from Induction Station that registrant refused to submit to induction.		
7/30/56	Forwarded complete Cover Sheet to Director of Selective Service through State Director by Auth: L.B.Memo 14 and State Memo 99.		

Bouziden vs United States of America

Selective Service System.

Special Form For Conscientious Objector.

* * * * *

Series I.--Claim For Exemption.

* * * * *

(B) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training or service in the armed forces. I therefore, claim exemption from combatant training and service, and if my claim is sustained, I understand that in lieu of induction into the armed forces, I will, because of my conscientious objection to noncombatant service in the armed forces, be ordered, subject to such regulations as the President may prescribe, to perform for twenty-four (24) consecutive months, such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate.

Jimmy James Bouziden
(Signature of registrant)

Series II.--Religious Training and Beliefs.

Instructions.--Every question in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Do you believe in a Supreme Being? Yes [x] No [ ]

2. Describe the nature of your belief which is the basis of your claim made in Series I above, and state whether or not your belief in a supreme being involves duties which to you are superior to those arising from any human relation. ans. on attached Sheet.

3. Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim made in Series I above.

I was actually brought up in this faith and through the instructions of my guardian and a study of the Bible I acquired the faith and belief in a Supreme Being, Which is God.

4. Give the name and present address of the individual upon whom you rely most for religious guidance.

I do Not relie upon any Individual for Religious Guidance but upon God & Christ Jesus. through God's Word the Bible.

5. Under what circumstances, if any, do you believe in the use of force?

I do beleive in self-defence for my self, family & brothers in God's Organization.

6. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

My commission from God is to preach the Gospel of God's Kingdom. So inspite of the objections raised by many I continue to fulfill my obligation as a minister. I have always been a law abiding Citizen respecting all laws of the land that do not conflict with Gods laws. My primary occupation is that of a minister which keeps me busy.

7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where

Yes. In fact it is my obligation to make public expression of my claim to whoever asks a reason of the hope I have. Never have I had the oppurnity to express my Claim as I have at this time, but from door to door in my ministry I have had the privilige to express my claim. Also at our company meetings from the platform I have been given the oppurnity to express my self in the form of a sermon.

Series IV.--Participation In Organizations

Instructions.--Questions 1, 2, and 3 in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

Bouziden vs. United States of America

1. Have you ever been a member of any military organization or establishment? If so, state the name and address of same and give reasons why you became a member.

None

2. Are you a member of a religious sect or organization? Yes. If your answer to question 2 is "yes," answer questions (Yes or no)
(a) through (e).

(a) State the name of the sect, and the name and location of its governing body or head if known to you.

Jehovah's Witnesses, Watchtower Bible & Tract Society, Brooklyn, N. Y.

(b) When, where, and how did you become a member of said sect or organization?

1942, Alva, Oklahoma. I was raised in that Faith & through a study of the Bible, I became a part of this Organization.

(c) State the name and location of the church, congregation or meeting where you customarily attend.

Central Unit, Wichita, Kansas

(d) Give the name, title, and present address of the pastor or leader of such church, congregation, or meeting.

Company Servant, Frank Wait, Wichita, Kansas

(e) Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war.

Ans. on Attached Sheet

* * * * *

Jimmy James Bouziden
(Signature or mark of registrant)

Bouziden vs. United States of America

Series II Question 2.

Yes I do believe in a supreme Being. My belief in a supreme Being does not involve duties in Military affairs. My commission and ordination as a Minister comes from God Isa. 61:1,2; Matt. 24:14; And farthermore Jesus said at Matt. 22:21; and Mark 12:17; "Render to Caesar the things that are Caesars and to God the Things that are Gods.

I do render to Caesar or this world Government what belings to it. But my life I do not owe it to Caeser but to God who gave it to me. 1 Corinthians 6:19-20;

Series IV Question 2 (e).

We have no creed or official ststment regarding participation in war in any form. Because from the Bible stand point it is an individual matter. It is stated in the Bible very clear that we as Ministers of God are already solders of Christ Jesus army and therefore we can not desert the army of Christ Jesus. 2 Tim. 2:3,4; And for that reason it would not be scriptural for me or any of Jehovah's Witnesses to tell one he should or should not take arms with the waring nations.

Department Of Justice
Washington, D. C.

December 4, 1952

Chairman, Appeal Board, Western District of Oklahoma Selective Service System, Room 422, Oklahoma Natural Building, Oklahoma City, Oklahoma.

Re: Jimmy James Bouziden, S.S. No. 34-80-33-15

Dear Sir: As required by section 6(j) of the Universal Military Training and Service Act, an inquiry was made in the above-mentioned case and an opportunity to be heard on his claim for exemption as a conscientious objector was given to the registrant by Honorable R. A. Belisle, Hearing Officer for the Western District of Oklahoma.

This registrant was born on February 21, 1933, in Auburn,

California, and, according to the record, is single. He attended the Aline High School, Aline, Oklahoma, for two years, leaving in 1948. He appears to have done farm work for his family from 1945 to 1948, to have been employed as a painter from 1948 to 1951, and to have been employed as a shipping clerk from December of 1951 to May of 1952.

Mr. Bouziden has been a member of Jehovah's Witnesses since 1941, having been ordained by immersion in July of 1942. He has served as a Company Publisher and has attended theocratic ministry school. In responding to Series IV, question 2(e), on Selective Service Form 150, the registrant stated that "We as ministers of God are already solders (sic) of Christ Jesus Army and therefore we can not desert the Army of Christ Jesus." With respect to circumstances in which he believes in the use of force, the registrant stated: "I do beleive (sic) in self-defence for my self, family and brothers in God's organization."

Investigation among references, neighbors, a teacher, and registrant's local company of Jehovah's Witnesses indicates that his general reputation is good, and certainly much better than that of the family of an uncle who raised him--the uncle apparently being a convicted bootlegger. One officer of an employing company, a former landlady, and a co-employee, all stated that the registrant had indicated to them that he would soon be in military service. Except for the Jehovah's Witnesses who were interviewed, none of the persons interrogated had been aware of his religious beliefs or of his claim as a conscientious objector. Local police officials who had been long time county law enforcement officers were of the view that since the registrant had been raised by an uncle with a criminal background and a generally bad reputation, he, the registrant, could not be a conscientious objector based on religious teachings. Although the three officials concluded as above, only one was personally acquainted with the registrant.

It appears from the registrant's own statements that he is prepared to engage in a war provided it is a religious war. He adopts by reference, in a letter to his local board, dated March 11, 1952, the content of a letter written to the Department of Justice by the legal counsel of Jehovah's Witnesses and printed in the journal "Consolation" on October

30, 1940. That letter embraces the position stated in "The Watchtower" of 1939, in an article entitled "Neutrality." It also states that Jehovah's Witnesses are not pacifists and will fight in a war to protect fellow servants of God. This latter point was made more recently in "The Watchtower" of February 1, 1951. It would, therefore, seem that the registrant is not opposed to participation in war in any form within the meaning of the Universal Military Training and Service Act and hence is not entitled to exemption.

After consideration of the entire file and record, the Department of Justice finds that the registrant's objections to combatant and noncombatant service are not sustained. It is, therefore, recommended to your Board that registrant's claim for exemption from both combatant and noncombatant training and service be not sustained.

The Selective Service Cover Sheet in the above case is returned herewith.

Sincerely,
T. Oscar Smith
Special Assistant to the Attorney General

Oklahoma State Headquarters
Selective Service System
114 North Broadway
Oklahoma City 2, Oklahoma

115.1-2

April 7, 1955

(Stamp)
Local Board No. 80
of Woods County
Apr 11 1955
American Legion Hut
Alva, Oklahoma

Local Board No. 80 of Woods County, Alva, Oklahoma.

Re: Jimmy James Bouziden, SS No. 34-80-33-15.

Gentlemen: This will acknowledge receipt of your letter

concerning the above-named registrant.

The District Attorney has advised this office that he contemplates that this case will be dismissed. The dismissal is based upon the recent decisions passed by the Supreme Court.

When we have received an order from the Court dismissing the action against the above-named registrant, you will be advised; also, at that time you will be advised that Operations Bulletin No. 123 does apply to this registrant, and your local board should reopen and consider anew his classification.

Sincerely yours,
For The State Director:
John A. Livingston
Major, Artillery
Executive Officer

Local Board ~~No~~. 80
of Woods County
Apr 2 1955
American Legion Hut
Alva, Oklahoma

April 29, 1955

Jimmy James Bouziden, 116 Maple St., Alva, Oklahoma.

Dear Sir: This is to inform you that your Order to Report for Induction (SSS Form No. 252), which was issued May 8 1953, has been cancelled upon the written request of the State Director.

Your classification will be reopened at the local board's next regular meeting.

Yours very truly,
For The Local Board:

Mary E. Haley, Clerk

Bouziden vs. United States of America

Jimmy James Bouziden
116 Maple St.
Alva, Okla.
May 9, 1955

Local Draft Board No. 80, Woods County, Alva, Okla.

Gentlemen; Your letter of April 29, 1955 was received and considered. Since my classification will be reopened at the next Local Board Meeting I would like to supply you with some additional information in my behalf.

Evidently in reviewing my classification the questions that will confront you are my Ministeral activities and my refusing to engage in the military affairs of the world or participation in war in any form. I would like to briefly explain each of these. First I would like to define the duties of a minister since I am one. Literally a minister is a servant the word minister is taken from the Greek word diakonos. So scripturally a minister is a public servant of Jehovah, the Almighty God, and ordained by him; one who follows the footsteps of Jesus Christ and preaches the good news of Jehovah's established kingdom by Christ; one who carries out divine commands and commissions originating with the Sovereign God-Ruler of the universe. Our great leader Christ Jesus made his primary occupation that of teaching the Bible truth to his fellow men in the form of preaching the good news of Gods Kingdom which is a comforting message in this time of trouble. Other examples could be cited such as the Apostles of Christ Jesus.

Naturaly now you are wandering how I fit into the picture. At a very young age I became interested in the activities of Jehovah's Witnesses through my foster parents. This may sound unusual but not impractial since Jesus at a very tender age took up the ministry for proof check Luke 2:42-49 Again we find Timothy instructed to preach at a very young age. 2 Tim. 3:15
1 Sam. 2:18

Because of my keen desire to learn the truth of the Bible and make it known to others I dedicated my life to the service of the Almighty God and so symbolized this by water baptism in the year 1942. Today my ministry consists of calling upon the

people in their very homes. The purpose of my calling is to stimulate interest in the Bible. To futher aid these people that are interested in the Bible, Bible helps or Bible aids are printed and left with the people on a very small contribution that more like aids can be printed. In about two weeks after literatue has been placed I call back with the intention of explaining more of the Bible and if possiable starting a home Bible study in one of the Bible aids using the Bible as a Text Book. In addition to this we have our regular Bible studies in our Kingdom Halls for the purpose of better equipping ourselves for the ministry. It is my duty as well as all others of Jehovah's Witnesses to share in these studies. Besides this we have what we call a Ministry School the purpose of this school it to train us in public speaking. I am enroled in this school and have given many discourses.

Now for our second question the one that most likly interests you most is my belief concerning participation in war and why I dont fight in these wars. Well I might illustrate this point take for example an individual who is holy devoted to this country and its government and if by chance he happened to be visiting in an another country and while their suddenly this country became involved in war with this nation and her allies, what would you think if he refused to take up arms against this nation you wouldn't blame him would you in fact you would be all for him wouldn't you. The purpose of this illustration is to show you my stand in regards to wars of the nations. Just as this individual in our illustration was holy devoted to this country and its government. And I will admit that this country does have the best man made government in existance. But on the other hand just as this individual looked to this country for every thing that is good I look to God's Kingdom to bring about the desireable conditions that we are all longing for. Do you know that this Kingdom is the most important doctrine taught in the Bible. I would like for you to read what Daniel 2:44 wrote about this Kingdom. Maybe after reading this scripture it will help you to under stand why I have taken my stand for God's Kingdom. And even Jesus took up this Kingdom message as the theme of his ministry while on earth. Do you know each time you repeate the model prayer Jesus taught us to pray Matt. 6:9-11 that you are actualy praying for that Kingdom to do away with all wickedness and deatroy him who

is responsible for world conditions today namly Satan the Devil. Check Revelation chapter 12:7-12; Than too we might take into consideration the instructions Jesus gave to his followers and as an ordained minister of God I am a follower of Christ Jesus, this is what he said "My Kingdom is no part of this world, If my kingdom were part of this world my servants would have fought that I should not be delivered up to the Jews. But, as it is my kingdom is not from this source." John 18:36;

In considering my classification I would appreciate it very much if this information is taken into account.

Yours very truly,
Jimmy James Bouziden

(Stamp)
Local Board No. 80
of Woods County
May 9-1955
American Legion Hut
Alva, Oklahoma

Jimmy J. Bouziden
320 N. Cascade
Colo. Springs, Colo.
May 30, 1955

Local Draft Board, No. 80, Alva, Oklahoma.

(Stamp)
Local Board No. 80
of Woods County
Jun 1-1955
American Legion Hut
Alva, Oklahoma

Dear Sir, I have received my classification of May 26, 1955 and as I am dissatified, I would like my classification appealed to the appeal Board in Oklahoma City, Oklahoma.

Thank You,
Jimmy J. Bouziden

Bouziden vs. United States of America

Selective Service System.

Individual Appeal Record.

(Stamp)
Local Board No. 80
of Woods County
Jun 2-1955
American Legion Hut
Alva, Oklahoma
(Local Board Date Stamp)

Name of registrant Bouziden, Jimmy James
(Last) (First) (Middle)

Selective Service Number 34 80 33 15

Classified by local board in Class I-A until _____, 194__

Date classified May 4, 1955

/x/ Forwarded on appeal taken by Registrant asking for IV-D classification

Date forwarded to Appeal Board June 2, 1955

_____
Member or Clerk of Local Board.

Selective Service System
Local Board No. 80
of Woods County
Jun 2-1955
American Legion Hut
Alva,, Oklahoma
(Local Board Stamp)

June 2, 1955

State Appeal Board, Western District of Oklahoma, Selective Service System, Oklahoma City, Oklahoma.

Re: Jimmy James Bouziden, SS No. 34-80-33-15.

Bouziden vs. United States of America

Gentlemen: The local board has placed the above named registrant in Class I-A because he has failed to establish to the satisfaction of the local board that he is eligible for a minister's classification.

The registrant stated that the local board has not or is not recognizing him as a minister. He testified at his appearance before the board that he is a painter, devoting 40 to 45 hours per week at this job; and is making approximately $2.00 per hour.

He signed the statement that he devotes 3 to 4 hours per week as a minister. On Sunday mornings he places literature and Sunday afternoons he attends lectures for about 1 1/2 hours, but receives no compensation for this so-called ministry work that he does. He would not commit himself as to whether he actually preaches before groups of people. He did state that these lectures were conducted by various ones each week. The impression which he left did not indicate that he is one of these lecturers.

The registrant's testimony failed wholly to show that he is engaged as a "regular" minister in conformity with the intent of Congress and the Regulations of Selective Service regarding exemption of ministers.

In view of the foregoing the board felt that their only alternative was to deny registrant's claim as a minister, and accordingly refused to change his classification.

Sincerely yours,
For The Local Board:
Hollis A. Vice
Chairman
Harold C. Brown
Secretary

J. W. Haley
Member

---

824 Insurance Building 141-2

June 3, 1955

(Stamp)
Local Board No. 80
of Woods County
Jun 10 1955
American Legion Hut
Alva, Oklahoma

Bouziden vs. United States of America

Appeal Board for the Selective Service System in the Western Federal Judicial District of the State of Oklahoma, Oklahoma City, Oklahoma.

Re: Jimmy James Bouziden, SS No. 34-80-33-15.

Gentlemen: Enclosed herewith is the Selective Service File of the above named registrant, which is forwarded on appeal to your Board for review and decision.

Sincerely yours,
For The State Director:
John A. Livingston
Major, Artillery
Executive Officer

Encl:
Registrant's File

cc: Local Board No. 80

Appeal Board, Western
Federal Judicial District
114 N. Broadway
Oklahoma City, Oklahoma

July 9, 1955

United States District Attorney, Federal Building, Oklahoma City, Oklahoma.

In re: Jimmy James Bouziden, #34-80-33-15, L.B. #80, Woods County, Oklahoma.

Dear sir: The file of the captioned registrant was reviewed by the Appeal Board for the Selective Service System in the Western Federal Judicial District of the State of Oklahoma at its meeting held July 9, 1955.

Under the provisions of Section 1626.25(a)(2) of the Selective Service Regulations, registrant's file is forwarded to you for the purpose of securing an advisory recommendation by the Department of Justice relative to registrant's conscientious objection claim.

Bouziden vs. United States of America

Thank you for your assistance in this matter.

Sincerely yours,
By Direction Of The Appeal
Board For The Selective Service
System In The Western Federal
Judicial District Of The State
Of Oklahoma

Clerk (Stamp)
Jul 14 1955
Gruber [Illegible]

Encls. file

Jimmy J. Bouziden
519 East First St.
Pratt, Kansas
Aug. 17, 1955

Local Draft Board, No. 80, Alva, Okla.

Dear Sir, This is to inform you of my Change of Address and would like my mail sent to this Address 519 East First St., Pratt, Kansas.

Thank You,
Jimmy J. Bouziden

(Stamp)
Local Board No. 80
of Woods County
Aug 1 1955
American Legion Hut
Alva, Oklahoma

(Stamp)
Local Board No. 80
of Woods County
Nov 17 1955
American Legion Hut
Alva, Oklahoma

Jimmy J. Bouziden
1912 E. St. Vrain
Colorado Springs, Colo.

November 15, 1955

Bouziden vs. United States of America

(Stamp)
Received Appeal Board
Mar 13 1956
[Illegible]

Local Draft Board, No. 80, Alva, Oklahoma.

Gentlemen: This is to inform you of my change of address. I would like to request that any correspondence be sent to 1912 East St. Vrain, Colorado Springs, Colorado.

Thank You,
Jimmy J. Bouziden

(Stamp)
Local Board No. 80
of Woods County
[Illegible] 1955
American Legion Hut
Alva, Oklahoma

December 3, 1955

Local Draft Board, Number 80, Alva, Oklahoma.

Gentlemen: Enclosed is a copy of the letter recently mailed to Mr. Lockwood Jones, Hearing Officer at Cordell Oklahoma. Please see that it is placed in my draft board file.

Thanking you for your prompt attention.

Sincerely,
Jimmy J. Bouziden

(Stamp)
Local Board No. 80
of Woods County
[Illegible] 1955
American Legion Hut
Alva, Oklahoma

December 3, 1955

Mr. Lockwood Jones, Hearing officer, Dept. of Justice, Post Office Building, Cordell, Oklahoma.

Bouziden vs United States of America

Dear Sir: In checking my report I was advised by my attorney to request the complete FBI report, which I believe is in your hands.

I need the complete report to compare with the summary so that I might determine whether the summary is fair and accurate. I also desire to identify the source of information and know who the informants are in order to be able to answer the information or challenge the informants because of evil motive, lack of knowledge or other grounds.

I also want to make a copy of the entire report so that it may be placed in the draft board file and be forwarded to the appeal board, for the reason, that the appeal board is entitled to all the favorable as well as the unfavorable evidence.

If, for some reason I cannot be supplied the complete report then I would like to request that you and the Department of Justice see to it that I am given a copy at the hearing and that one be sent to the appeal board together with the final recommendation of the Department of Justice.

May I state in concluding, that I do not want to call the informants before you or cross examine them. Neither do I wish to delay the proceedings. I only want to have the opportunity to answer this report and also, have the favorable evidence brought to the attention of the appeal board and make use of it at my hearing before you.

Thanking you for your kind assistance.

Yours very sincerely,
Jimmy J. Bouziden

(Stamp)
Local Board No. 80
of Woods County
Dec - 1955
American Legion Hut
Alva, Oklahoma

December 6, 1955

Local Draft Board, Number 80, Alva, Oklahoma.

Bouziden vs United States of America

Gentlemen: This is to notify you of my marriage August 6, 1955. I was married in Oklahoma City, Oklahoma to Jaree Lynn Luttrell. Please include this information in your file.

Thank you,
Jimmy J. Bouziden
Jimmy Bouziden
Jaree Lynn Bouziden

Resume of the Inquiry

Re: Jimmy James Bouziden

Conscientious-Objector Claimant

Resume of the Inquiry Dated July 16, 1952

The registrant was born February 21, 1933. He attended the Aline, Oklahoma, High School during his freshman and sophomore years from 1946 to 1948. A former instructor recalled that before attending the Aline High School, the registrant attended the nearby Prairie Bell country school. This former instructor recalled that while the registrant attended Aline High School, he resided with his uncle. She stated that he was a nice young boy of good character and reputation, but never mentioned belonging to Jehovah's Witnesses. An official of Jehovah's Witnesses in Alva, Oklahoma, advised that the registrant had been attending the Theocratic Ministry School of Jehovah's Witnesses in Alv. from 1948 to 1951.

Members of the registrant's Local Draft Board advised that after hearing the registrant in person before the Board, all believed that he was merely trying to evade military service. None stated that they knew anything regarding his character or reputation; all pointed out that they had not known him previous to his personal appearance before the Board in April 1952.

An official of Jehovah's Witnesses in Alva, Oklahoma, and several references, who were members of Jehovah's Witnesses, as well as several neighbors believed the registrant sincere in his religious beliefs as a member of Jehovah's

Witnesses and sincere in his claim as a conscientious objector The official of Jehovah's Witnesses stated that the registrant was ordained a minister in July 1942 and reared in a Jehovah's Witnesses home, both of his parents being members before their death. He recalled that at times, the registrant was loud talking at meetings, but stated that he would quiet the registrant down. He pointed out the registrant was pretty regular in his attendance at meetings whenver he was in Alva. One reference, who believed the registrant was of good character and reputation and sincere in his claim, advised that he had heard of the registrant taking a drink, but never heard of him smoking. Another reference stated that the registrant worked for him as a painter from 1948 to 1951 and was a good worker. Another reference stated the registrant neither smokes nor drinks to his knowledge. A relative pointed out that the registrant is now following the wheat harvests in Western Kansas and Eastern Colorado. It is to be noted that all of these aforementioned persons believed that the registrant would not be attempting to evade military service.

Several other neighbors advised that they do not believe the registrant can possibly be sincere in his claim as a conscientious objector, based upon his religious beliefs because he was reared from a small boy in the home of his uncle, who was a convicted bootlegger in Woods County, Oklahoma. A former law official of Woods County advised that the registrant is of questionable character and reputation and that his entire family are of poor character and reputation in the community. He stated that the registrant's uncle was sentenced to the Oklahoma State Penitentiary in the early 1940's to serve a felony sentence for bootlegging. He could not see how the registrant could be a conscientious objector, based upon religious teachings, and be reared from a family such as that Two other former officials of Woods County advised that they did not know the registrant personally, but opined that he could not be very sincere in his claim based upon religious training and belief, since he was reared by his uncle, who was a notorious bootlegger and served time in the state penitentiary. One stated that it was hard for him to believe that anyone who was reared in that type of home environment could be a conscientious objector, based upon religious training and beliefs. A close neighbor advised virtually the same, but stated that he knew nothing derogatory concerning the registrant, except that the registrant's uncle and his entire

family were considered to be of poor character and reputation in the community. Another neighbor advised virtually the same. An official of Jehovah's Witnesses in Wichita, Kansas, advised that the registrant came to Wichita in November 1951, and immediately enrolled in the Theocratic Ministry School sponsored by Jehovah's Witnesses. He stated that the registrant moved from Wichita in May 1952, and during the time that he was there, the registrant was absent from nine of the classes in the Theocratic Ministry School. He stated that the registrant devoted a total of twenty-four hours to outside religious activities during the time that he was in Wichita. He believes the registrant devoted to Jehovah's Witnesses and sincere in his religious work and in his objections to military service. He, like another member of Jehovah's Witnesses, stated that he had never seen the registrant drink alcoholic beverages or heard him use profanity. The other fellow Jehovah's Witness advised that the registrant participated in outside church work and had been brought up since early childhood in Jehovah's Witnesses. Both pointed out that he was of excellent character and reputation and sincere in his religious beliefs.

A former landlord advised that the registrant resided in her apartments from the fall of 1951 until May 1952. She stated that the registrant and three of his close relatives, all men, occupied an apartment and were spoken to on several occasions concerning the noise made by them while in the apartment. The former landlady stated the registrant and his kin were loud talkers and continual laughers. She feared that they might disturb some of the other tenants with their loud noises. She did not know whether they drank, but did not believe that they used profanity. She recalled that the registrant remarked to her that the Army would soon have him; shortly thereafter, he moved from the address. She had no other information.

Records at the Midwest Surgical Supply Company, Wichita, reflect the registrant was employed by the company from December 24, 1951, until May 17, 1952, where he was known as a clerk in the shipping department who performed his work very satisfactorily. An official stated that she had heard the registrant say he would soon be in the military service. Two former fellow employees stated that the registrant was a very good worker, but one who used profanity on several

occasions. Both employees stated that the registrant drank beer, and one recalled drinking with the registrant and visiting pool parlors for the purpose of shooting snooker. Both stated that they had never seen the registrant drink more than two beers, or seen him intoxicated. One recalled that at a company party, the registrant drank alcoholic beverages, drinks of bourbon and soda, but had no idea of the number of mixed drinks consumed by him. Both stated that they recalled the registrant made a statement to the effect that the U.S. Army was about to get him. Neither had ever heard the registrant express his religious beliefs, or his attitude toward military service. Both stated that they did not believe he was sincere in his religious beliefs to the point of being opposed to military service due to the aforementioned information.

Credit and criminal records are negative.

Resume of the Inquiry Dated September 22, 1955

The registrant was born February 21, 1933. Investigation reflected that the registrant and his brother formerly resided in an apartment house in Wichita, Kansas, which was operated by a woman who was later arrested and convicted for operating an abortion ring on the premises. An official of the Wichita Police Department advised that the woman was the owner and operator of several apartment houses located in one block in Wichita. He pointed out that on October 7, 1954, two of the woman's apartments were raided by the Wichita Police Department. He stated that five women were found on the premises who were there to arrange for abortions. He pointed out that subsequent investigation disclosed that an abortion ring had been operating on the premises for quite some time. He also stated at the time of the aforementioned raid, a young lady, who was a business associate of the owner of the apartments, was found in the hallway of the bachelor apartments, located in the same block. He also stated that this young lady has a previous arrest record on a morals charge and was convicted of "fornication." Another official of the Wichita Police Department advised that the woman who owned and operated the apartment houses was convicted on charges growing out of the aforementioned raid and is presently serving a one-to-five-year sentence at the Lansing State Prison.

Bouziden vs. United States of America

The woman who owned and operated the aforementioned apartments was interviewed at the prison. She stated that she met the registrant and his brother when they began to live in her motel in late 1952. She stated that the two brothers lived there for about a month or two and then moved in to one side of a duplex house which she owned in the block where the aforementioned raid took place. She stated that both the registrant and his brother were painters and paper hangers who worked for different contractors. She pointed out that the personal reputations, character, habits, morals, speech, and actions of both the registrant and his brother were very good and stated that they went to church each Sunday and to church meetings several nights each week. She also stated that a girl came to her in 1952, when she was pregnant. She stated that she took care of this young girl, helped arrange the young girl's illegitimate baby to be adopted, and thereafter had the young girl work for her as manager of the motel in which the registrant and his brother lived. She stated that both the registrant and his brother became acquainted with this girl, and the registrant's brother began keeping company with her. She stated that the three of them went out together, to movies, for auto rides, and to swimming places. She stated she never knew the registrant to have a date with any girl. She heard from some source that the young girl became pregnant again by the registrant's brother and went to Oklahoma to have the baby. She pointed out that the young girl had a miscarriage and returned to Wichita. She did not know if the registrant was aware that his brother was intimate with the young girl while they lived together in her apartments in 1952; she was not aware whether the registrant or his brother knew that she operated an abortion ring and kept girls that were illegitimately pregnant in her home, while the registrant and his brother rented an apartment from her in the same block.

The young girl aforementioned advised that she formerly dated the registrant's brother, but she stated she never had any dates with the registrant. She pointed out that the registrant did go out with them on a few occasions. She knew of no bad habits which the registrant had and stated that she has had no contact with him for about the past four years, except on one occasion about a year and a half ago when she had a cup of coffee with him. When she was acquainted with the registrant, she believed that he attended Jehovah's

Witnesses church on Sunday, but did not know how much time he devoted to religious activities. She believed the registrant sincere in his conscientious-objector claim and stated that he tried to live his religion. She recalled that on one occasion, the registrant went with his brother and her when they went to a place where beer was served, but the registrant did not drink any beer. A young woman, whom the official of the Wichita Police Department advised was found in the hallway of the bachelor apartments mentioned above, and later convicted of "fornication," advised that she was not acquainted with the girl mentioned above who was supposedly pregnant and not acquainted with any party by the name of Bouziden. Another young lady, who requested her identity be concealed, advised that she was acquainted with the woman who ran the apartment house and with the young girl whom the registrant's brother went with. She stated that she had heard a rumor about three years ago that the young girl, who was not married, was pregnant. She declined to state who was responsible for the girl's condition but noted that at one time the girl was going with the registrant's brother. She recalled seeing this girl in a Wichita night club at least on one occasion with two dark-complexioned young men, one of whom she thought was the registrant's brother. She stated that she could not identify the second. She did not recall specifically that the trio was drinking, but noted that the girl liked to drink and presumably was there for that purpose. She stated that this was about three years ago. She pointed out that she only knew the registrant's brother to the extent that he was the "boy friend" of the young girl mentioned. She pointed out that she was not acquainted with the registrant at all.

It is to be noted that the registrant formerly resided in Wichita and Pratt, Kansas, on and off for several years An official of the Wichita Credit Bureau advised that the registrant had applied for credit clearance on two occasions and had been declined, for lack of previous credit information This official stated that the registrant listed a certain employer but that the credit bureau had been unable to verify this employment as this employer could not be located. An official of the Pratt Credit Bureau advised that records reflect the registrant purchased an automobile through a bank at Pratt and had been classified as "slow in making payment " An official of the bank involved confirmed the information and stated that one letter had been written to the registrant

because of his failure to make payment on a loan. He stated that generally, the registrant was slow in paying off his obligation.

An official of the Wichita Police Department advised that a traffic warrant, dated August 9, 1954, was issued against the registrant for failing to appear in traffic court to answer a charge of over parking his car. He stated that a second traffic warrant, dated March 11, 1954, charged the registrant with failure to appear in traffic court concerning an illegal muffler on his automobile. He stated that a notation in his records reflect that traffic officers of the Wichita Police Department had attempted to locate the registrant at his home, but had been unsuccessful. Records at the Pratt, Kansas, Police Department reflect that the registrant was arrested on October 4, 1954, for running a stop sign. Record further reflects that at the time of his arrest, the registrant was "very belligerent." No other information is available.

Investigation at Wichita reflected that most neighbors in the neighborhoods where the registrant lived, failed to recall the registrant except by name. It is to be noted that the registrant and his brother visited many relatives in the Wichita area. Persons interviewed in the relatives' neighborhood advised that they were persons of good reputation and known to be devout members of Jehovah's Witnesses. Most of these persons interviewed stated that they were aware that two young men visited these people on a number of occasions, but had no further information concerning the character or religious beliefs of the young men. One relative advised that the registrant, at an early age, came to live with her family at Alva, Oklahoma, and that they had been raised together in the same house. She believed the registrant was of excellent character and reputation and stated that he was a member of Jehovah's Witnesses and known to be a member in good standing of the faith. He was believed to be sincere in his religious beliefs pertaining to military service. It is to be noted that this relative was not able to provide the registrant's former addresses while he resided in Wichita. The relative stated that the registrant's associates in Wichita were restricted to his relatives, and particularly his brother. The relative stated that the registrant came and left Wichita quite frequently and probably never lived

in the area long enough to establish himself with a Jehovah's Witnesses congregation. An acquaintance, who was previously interviewed by a representative of the FBI, advised that she continued to believe the registrant was of good character and reputation and a member in good standing of Jehovah's Witnesses. She believed that he was sincere in his religious beliefs. She also was unable to provide any other information concerning the registrant's residence or associates in Wichita. She pointed out that he usually associated with his brother or other members of the Jehovah's Witnesses. Two other acquaintances advised that they believed the registrant was of good character and probably sincere in his religious beliefs as a Jehovah's Witness. One stated that he thought he had recalled seeing the registrant attending a congregation of Jehovah's Witnesses in Wichita. The other was unable to advise in which congregation the registrant attended and pointed out that the registrant moved about so much that it was quite possible that he may have attended any one of the congregations in Wichita for a short period of time. An official of the congregation mentioned by the aforementioned acquaintance stated that he was not acquainted with the registrant or his relatives and pointed out that the registrant is not assigned to his congregation. An official of Jehovah's Witnesses in another congregation in Wichita advised that he was acquainted with the registrant and his brother when they were attending religious services about three years ago. He pointed out that he did not know the registrant well because the registrant's attendance at the meetings was not regular. He believed that this was due to the fact the registrant was employed as a painter and was sometimes taken away from Wichita on Sundays. He stated he would not care to express an opinion in regard to the registrant's reputation or sincerity. It is to be noted that no other officials of Jehovah's Witnesses recalled the registrant or had him listed as a member of their congregations.

Investigation at Pratt, Kansas, reflected that the registrant is employed as a painter and has worked off and on for two men during the past four years. He was described by these two men as a person of good character and reputation, and a young man who does not smoke, drink, or frequent places which would be inconsistent with his religious beliefs. One stated that at the end of a day when both he and the registrants were hot and dry, and at his suggestion, they visited

a bar and had a beer. He pointed out that they each consumed one beer and then left the establishment. He stated that the registrant did not leave the impression that he drank alcoholic beverages. He recalled that the registrant mentioned to him that he formerly lived in an apartment of a lady in Wichita, who was later arrested for operating an abortion ring. He recalled no further remarks of the registrant pertaining to this matter. Both of these men stated that the registrant is believed to be a sincere, devout member of Jehovah's Witnesses. One stated that the registrant's entire family are all members of Jehovah's Witnesses and that several of them, including himself, had been interned in camps during the war because of their religious beliefs. He also stated that the registrant was planning on getting married, but was unable to furnish any information about the registrant's prospective wife. A former landlady advised that the registrant was of excellent character and reputation and a religious person. She stated she noted on several occasions when she was cleaning his rooms that he had quite a bit of religious literature of Jehovah's Witnesses in his apartment. She believed he was a devout, sincere member of his faith. She stated that she would be inclined to believe any religious expressions that he might make, because she believed him to be a truthful person. Another landlady advised that she had no idea of the registrant's character because he moved into her house as a roomer about four days ago and immediately departed for Oklahoma with the intention of getting married. She stated that he seemed intelligent and of good reputation and had come to her highly recommended by his former landlady. Two acquaintances advised that he was a person of good reputation and a sincere, devout member of Jehovah's Witnesses.

An official of Jehovah's Witnesses at Pratt advised that he was unable to locate the registrant's report card reflecting his church activity, but recalled that the registrant had a rather poor attendance for his Theocratic Ministry School meetings. He stated that this tends to indicate that the registrant in below average in church activities. He stated that his general observation of the registrant leads him to believe that the registrant is of good reputation and character and sincere in his religious beliefs. Another official of Jehovah's Witnesses in Pratt advised that he has been acquainted with the registrant intermittently for about five years. He stated that the registrant attended meetings

of the church in Pratt, but that he was not very active in the work and ministry of the church. He did not believe that he was well enough acquainted with the registrant to comment on his personal habits, though he knew of no bad habits that the registrant possessed. He stated that his contact with the registrant and his personal knowledge of him was too limited for him to comment upon his sincerity as a conscientious objector. He stated the registrant was classed as a Publisher, except when he was actually engaged in ministering work, when he was regarded as a minister. He stated that the registrant's record card reflects that he contributed sixteen hours of religious work in the last year; he pointed out that this is far below the average number of hours performed by the congregation for the same period of time. He stated that the record reflects that the registrant was also below average in placing publications of the church. He also pointed out that it is each member's responsibility to transfer his record when he transfers from one congregation to another. He pointed out that the registrant had not done this when he left the Pratt Congregation, as he left his record in Pratt and did not take it to the church that he transferred to. He commented that this is against the wishes of the church.

Investigation at Alva, Oklahoma, reflected that a member of the registrant's Local Draft Board stated that it was the opinion of both he and the other two members of the Local Board that the registrant was not sincere in his conscientious-objector claim. He pointed out that the registrant appeared for a personal interview on the night of May 23, 1955, and became somewhat confused after the Local Board refused to allow his brother to sit on the meeting. He stated the registrant advised the Board, at his personal appearance, that he was working full time as a painter in Colorado Springs, Colorado, and was only devoting a small amount of time to ministerial work in Jehovah's Witnesses. He stated that the Local Board offered the registrant a I-O classification as a conscientious objector to do hospital work, but the registrant refused to accept such classification, claiming to be a minister in Jehovah's Witnesses and wishing a IV-D classification.

Neighbors in Alva, generally, do not believe the registrant is sincere in his claim as a conscientious objector and stated that they feel he is attempting to evade military

service. It is noted that most persons interviewed believed that the registrant's home environment, being raised by an uncle who was a convicted bootlegger, is inconsistent with his claim of being a conscientious objector, based upon his religious training and beliefs. An official of Jehovah's Witnesses in Alva advised that the registrant is active in his ministerial work when he is in Alva, but that he is a fulltime painter, presently at Colorado Springs, Colorado. He stated the registrant has been brought up in the faith and is sincere in his religious beliefs as a member of Jehovah's Witnesses and in his claim as a conscientious objector. He pointed out the registrant usually comes to Alva about once every three weeks and then goes to Oklahoma City, where he has been going with a girl, also a member of Jehovah's Witnesses, who he is planning to marry in the near future. Records at the Traffic Bureau of the Alva Police Department reflect that on May 26, 1949, the registrant was fined $5.00 on an excessive speeding charge.

Investigation at Colorado Springs, Colorado, reflected that the registrant resides in a hotel in Colorado Springs and has been employed spasmodically with his brother as a house painter. Two officials at the hotel advised that the registrant and his brothers go out frequently on religious meetings and speak of attending religious services, as well as distributing religious literature about the city. Most stated that though they have never discussed religion with the registrant, they feel that he is sincere in his religious beliefs. The registrant's brother's wife advised that her husband, the registrant's brother, had spent time in the penitentiary in connection with his own religious objections to military service. She stated that all the registrant's family are members of Jehovah's Witnesses and that the entire family of boys attend the Kingdom Hall in Colorado Springs. She stated they regularly attend meetings on Wednesdays, Fridays, and Sundays. She pointed out that the registrant attends regularly and preaches from door to door, also distributing literature. She believes he is most sincere in his religious beliefs. An official of Jehovah's Witnesses in Colorado Springs advised that the registrant and his brothers are all attending church services on a regular basis. His records reflect the registrant has been working every month in religious activities and spent a total of ten hours during the months of May, June, and July of this year

in outside religious activities. He stated the registrant appears at religious meetings three times each week. Asked whether or not he considered the registrant a minister, this official stated that he is not sure the registrant is a minister because he does not know whether or not the registrant has been "immersed." He feels sure the registrant is very sincere in his religious beliefs, though he has never discussed conscientious objection to military service with him. Credit and criminal records in Colorado Springs are negative.

Prepared: October 14, 1955

Exhibit B.

December 23, 1955

Mr. Maurice Evenson, Hearing Officer, Dept. of Justice, 414 Thatcher Building, Pueblo, Colorado.

Dear Sir: In checking my report I was advised by my attorney to request the complete FBI report, which I believe is in your hands.

I need the complete report to compare with the summary so that I might determine whether the summary is fair and accurate. I also desire to identify the source of information and know who the informants are in order to be able to answer the information or challenge the informants because of evil motive, lack of knowledge or other grounds.

I also want to make a copy of the entire report so that it may be placed in the draft board file and be forwarded to the appeal board, for the reason, that the appeal board is entitled to all the favorable as well as the unfavorable evidence.

If, for some reason I cannot be supplied the complete report then I would like to request that you and the Department of Justice see to it that I am given a copy at the Hearing and that one be sent to the appeal board board together with the final reccommendation of the Department of Justice.

Bouziden vs. United States of America

May I state in concluding, that I do not want to call the informants before you or cross examine them. Neither do I wish to delay the proceedings. I only want to have the opportunity to answer this report and also, have the favorable evidence brought to the attention of the appeal board and make use of it at my hearing before you.

Thanking you for your kind assistance.

Yours Sincerely,
Jimmy J. Bouziden

(Stamp)
Local Board No. 80
of Woods County
Dec 28 1955
American Legion Hut
Alva, Oklahoma

December 28, 1955

State Director, Selective Service System, 114 North Broadway, Oklahoma City, Oklahoma.

Re: Jimmy James Bouziden, SSN 34-80-33-15.

Dear Sir: We have some additional information, such as marital status, copy of the FBI summary, and changes of address, on the above named registrant.

Shall we forward these communications through Headquarters to the State Appeal Board in order that they may be placed in his Cover Sheet?

We didn't want to mail these without first checking.

Yours very truly,
For The Local Board:

Mary E. Haley, Clerk

Bouziden vs. United States of America

Oklahoma State Headquarters
Selective Service System
114 North Broadway
Oklahoma City 2, Oklahoma

December 29, 1955 141-2

(Stamp)
Local Board No. 80
of Woods County
Jan 3-1956
American Legion Hut
Alva, Oklahoma

Local Board No. 80 of Woods County Alva Oklahoma

Re: Jimmy James Bouziden SS No. 34-80-33-15

Gentlemen: Reference is made to your letter dated December 29, 1955, concerning additional information relating to the above-named registrant.

Since this registrant's cover sheet has been forwarded to the Department of Justice for investigation and recommendation, it is suggested that your local board retain the information in your files until the cover sheet has been returned to this Headquarters. At that time we will return the file to your local board for further consideration.

Sincerely yours,
For The State Director
John A. Livingston
Major, Artillery
Chief, Manpower Division

Exhibit A.

January 4, 1955

Received by Appeal Board
March 12, 1956

Mr. Maurice Evenson, Hearing Officer 414 Thatcher Building, Pueblo, Colorado.

Bouziden vs. United States of America

Dear Mr. Evenson: Enclosed you will find two letters in answer to the FBI resume unfavorable evidence.

Please see that one of them is forwarded to the appeal board to be included in my Draft Board file.

Thanking you for your cooperation.

Yours very sincerely,
Jimmy J. Bouziden

January 4, 1956
(Received by Appeal Board Mar. 12, 1956.)

Mr. Maurice A. Evenson, Hearing Officer, 414 Thatcher Building, Pueblo, Colorado.

Dear Mr. Evenson: In the resume of the Inquiry dated July 16, 1952 there are several things I would like to call to your attention.

First of all members of the Local Draft Board stated that I was merely trying to evade military service, and then in the next breath they stated that they had not known me prior to this hearing in April 1952. Since they had not known me before, and refused to let my consider my ministerial stand from a Bibical stand point (I have a witness to this effect) how did they truthfully know my motives?

I would like to ask you a question, what would you think if the quality of your profession was determined by some thing that someone else did? The reason I ask this is because this is exactly what the resume has done to me. It is true enough that the character of my Uncle was poor at one time, but, that is no reason to think he couldn't change. If you will examine his record from the early forties until this time you will find no fault. It is interesting to note that since he began to associate with Jehovah's Witnesses a change has been noted in his character. It was not until after he had begun associating with Jehovah's Witnesses that I took my stand, so I don't see how his reputation prior to that time could have any bearing on my case. Therefore, I was reared from a small boy in this faith.

Bouziden vs. United States of America

As to the inquiry dated September 25, 1955. I would like to explain why my attendance at the congregation in Pratt Kansas was not as regular as might have been expected. The main reason was that I very often attended my home town congregation in Alva, Oklahoma, which is only 70 miles from Pratt. Also, I was making trips to Oklahoma City, Oklahoma approximately once every three weeks to visit my fiance and while in Oklahoma City I attended services there.

The official of Jehovah's Witnesses at Pratt said that I left Pratt without taking my publisher's record card with me, this is proper unless one is sure he will be gone more than three months, I was back in Pratt before this time limit was up. If you would like to investigate this correction you may find it in the little booklet entitled "Preaching Together in Unity" paragraph 79, which states the rules of our congregation in this regard.

In the beginning of the Inquiry of September 25, 1955 it is stated that I resided in an apartment house in Wichita Kansas which was operated by a woman who was later arrested and convicted of operating an abortion ring on the premises. It is true that I resided there for a short time but, I knew nothing of her activities or personal dealings. It was not until I moved to Pratt Kansas and a good deal of time later that through the Newspaper that I learned of what she had done. My brother has been accused of a very serious offence and although I recall that he dated a girl which may be the one mentioned, I have no knowledge of his personal affairs and am unable to answer for him.

I will appreciate your consideration of the points mentioned.

Sincerely yours,
Jimmy J. Bouziden

CC/S

February 21, 1956

(Stamp)
Local Board No. 80
of Woods County
Feb 23 1956
American Legion Hut
Alva, Oklahoma

Bouziden vs. United States of America

Colonel Herbert Hope, State Director, Oklahoma State Headquarters, Selective Service System, Oklahoma City, Oklahoma.

Re: Jimmy James Bouziden, SS No. 34 80 33 15.

Dear Sir: This will acknowledge receipt of your letter of February 20th, 1956 relative to the above matter.

We were advised by Maurice A. Evenson, Hearing Officer, Pueblo, Colorado under date of January 12th, 1956, that the hearing had been held in this matter on January 6th, 1956, and his report in duplicate, with the Selective Service file and FBI reports had been forwarded to the Department of Justice in Washington. It was his recommendation that the appeal based upon grounds of conscientious objection be not sustained. This recommendation was dated January 12th, 1956.

If the file is not received within the next few days, we will be glad to make inquiry of the Department of Justice as to its whereabouts. One reason for the long delay is that the matter was first referred to Mr. Jones, Hearing Officer, Cordell, Oklahoma. The registrant then requested that it be transferred to Colorado and the file was thereupon forwarded to the United States Attorney, Denver Colorado on December 12th, 1956.

Very truly yours,

Paul W. Cress
United States Attorney

George Camp
Assistant United States Attorney

CC Department of Justice
(T. Oscar Smith, Esq.,
Assistant Attorney General
Washington 25, D.C.
Local Board No. 80, Woods County,
Alva, Oklahoma

Bouziden vs. United States of America

Oklahoma State Headquarters
Selective Service System
114 North Broadway
Oklahoma City 2, Oklahoma 141-2

February 24, 1956

(Stamp)
Local Board No. 80
of Woods County
Feb 2 1956
American Legion Hut
Alva, Oklahoma

Local Board No. 80 of Woods County, Alva, Oklahoma.

Re: Jimmy James Bouziden, SS No. 34-80-33-15

Gentlemen: When our auditor was in your office recently you mentioned that you desired to know the current status of the above-named registrant's file.

The District Attorney for the Western Federal Judicial District has been contacted. He states that the delay in this case was caused by various types of transfers that occurred. The matter was first referred to Mr. Jones, Hearing Officer, Cordell, Oklahoma. After finally setting the date for the hearing, the registrant then requested it be transferred to Colorado.

The hearing has been held and the recommendation of the hearing officer, with the Federal Bureau of Investigation reports, have been forwarded to the Department of Justice in Washington. It is believed that the recommendation from the Department of Justice will be forthcoming shortly.

Sincerely yours,
For The State Director:
John A. Livingston
Major, Artillery
Chief Manpower Division

Bouziden vs. United States of America

United States Department of Justice
Washington, D. C.

[Stamp illegible]

March 2, 1956

Chairman, Appeal Board, Western District of Oklahoma, Selective Service System, Room 422, Oklahoma Natural Bldg., Oklahoma City, Oklahoma.

Re: Jimmy James Bouziden, Conscientious objector.

Dear Sir: As required by section 6 (j) of the Universal Military Training and Service Act, as amended, an inquiry was made by the Department of Justice in the above-mentioned case and an opportunity to be heard on his claim for exemption as a conscientious objector was given to the registrant by Mr. Maurice A. Evenson, a Hearing Officer for the Department of Justice.

The information obtained from the inquiry and considered by the Department of Justice in arriving at its recommendation is contained in the Resume of the Inquiry attached hereto and made a part hereof.

Registrant was born at Auburn, California, on February 21, 1933. He attended grade school at Prairie Bell, Woods County, Oklahoma, and spent two years at the high school in Aline, Oklahoma. On August 6, 1955, he was married to his wife, Jaree Lynn Bouziden, at Oklahoma City, Oklahoma. He and his wife now reside at 1912 St. Vrain, Colorado Springs, Colorado, and have so resided for the past three or four months. Prior to that time registrant lived at Pratt, Kansas. He stated that he is working as a house painter in Colorado Springs, Colorado; that he works about 40 hours per week at this occupation, and that he earns $2 per hour. Registrant's SSS Forms No. 150 and No. 100 claimed exemption from combatant and noncombatant military training and service and claimed that the registrant was brought up as a Jehovah's Witness and ordained as a minister of Jehovah's Witness in July 1942. Following a former hearing before another Hearing Officer the registrant was classified I-A and thereafter he refused to be inducted and prosecution was refused. This case was then reopened and after a personal appearance by registrant before his Local Board he was again classified I-A and he

has again appealed.

Annexed hereto and made a part hereof are Exhibits A and B submitted to the Department of Justice in behalf of the registrant.

Registrant appeared before the Hearing Officer in Pueblo, Colorado, on January 6, 1956, accompanied by his brother and the registrant's wife. The Hearing Officer observed that the registrant appeared to be evasive and that he seemed to lack a knowledge of the Bible in general. The registrant told the Hearing Officer that he does not smoke. When first questioned about his drinking habits he stated that he does not drink, but when pressed, he admitted that he has drunk intoxicating liquors and still drinks beer. When he was questioned about arrests, he first stated that he had never been arrested and had never been in any trouble with the police. He later admitted that he had some difficulty with the Wichita Police Department on August 9, 1954, when a traffic warrant was issued against him for failing to appear in traffic court to answer a charge of over-parking. He also admitted that a second traffic warrant dated March 11, 1954, was issued against him for failing to appear in response to another traffic violation. He further admitted that the Pratt, Kansas Police Department arrested him on October 4, 1954, for running a stop sign. With reference to the first traffic warrant which was issued on August 9, 1954, registrant offered the explanation that somebody else must have been driving his car at the time the traffic ticket was issued and that he did not know anything about the ticket.

Registrant stated that he first came into contact with Jehovah's Witnesses when he was about six years of age and was living with his aunt and uncle who were members of this sect. He stated that his parents were dead. He stated that he attended Jehovah's Witnesses with his aunt and uncle and became a member of the sect in 1940. When questioned as to how one becomes a member of Jehovah's Witnesses he did not appear to be able to answer the question, and only when pressed on specific points was he able to respond that he became a member through study of the Bible, attending meetings and that he was baptized in 1942. As shown by the resume the fact and the date of registrant's immersion could not be verified. He stated that he bore his allegiance to the Government

of Jehovah and not to any man made Government where a conflict existed. He said that he believed in self defense and that he would take a stand against foreign invaders in the protection of himself, his family, his property and his brothers in the faith. Registrant stated that he attends the North Unit of Jehovah's Witnesses at Colorado Springs, Colorado. His Publisher's Record Card is now in Colorado Springs, but admitted that he had not transferred the card from Pratt, Kansas, until two months ago. He claims to be a minister of Jehovah's Witnesses. He stated that the approximate membership of the North Unit at Colorado Springs, was 70 members. When queried as to how many ministers there were for the North Unit, he stated that he did not know, but that there were several. He stated that his brother, Richard Bouziden, who attended the hearing, was also a minister of the North Unit and that his wife was a minister. He admitted that he, the registrant, was not in charge of any of the activities at the North Unit, but stated that once in a while he would give a talk when called upon to do so. He stated that he received his ordination from the Bible. When questioned as to his duties as a minister, he stated that he was a Company Publisher which meant that he was supposed to attend the meetings and take part in the meetings, that he gives talks once in a while at the Theocratic Minister's School, that he reads scriptures in meetings when asked to do so, and that he goes from house-to-house as directed. He admitted that he has no duties which are peculiar to his position, but that the other ministers of the North Unit do the same. When asked about the number of hours spent in ministerial duties, he stated that he spends about three or four hours per week. When questioned about his poor attendance at religious meetings at Pratt, Kansas, he offered the explanation that he was attending meetings at Oklahoma City and at Alva, Oklahoma, when he was not at Pratt, Kansas.

With reference to noncombatant service, registrant stated that he was not against it as such but felt that he could not participate in it because it would interfere with his ministerial duties. He stated that he is devoted to Jehovah God's Service and feels that he is a Soldier of Christ and cannot serve two Kings. He feels that he should obey God rather than man when there is a conflict.

The brother of registrant said he is 31 years old and

has been with registrant from the time registrant was born. He stated that in the early 1940's he and registrant began studying with Jehovah's Witnesses. At that time they were living together with an aunt and uncle and that he and registrant have been very close during their lives. He feels that registrant is sincere, though registrant must learn more about the Scriptures in connection with his duties as a minister. He believes that the attendance of registrant at religious services is about average. He admitted that he and registrant drink alcoholic beverages once in a while. With reference to noncombatant service he stated that registrant has dedicated himself to Almighty God and if he participates at all, it would hinder his ministerial work. He compares the problem to allegiance to two forms of Government. He states that he is definitely not against the Government and that the Government of the United States is the best man made Government in existence. When asked about his own classification in the draft, Richard Bouziden stated that he has been I-A for a period of time and then was classified as over-age. It was only after he was pressed with further specific questions that he admitted that during World War II he had taken the same stand as registrant and was convicted by a Federal Court in 1944, and spent two years at the Penitentiary at El Reno, Oklahoma.

The Hearing Officer found that the general appearance and conduct of the registrant at the hearing failed to show sincerity and good faith. He concluded that the registrant is not opposed to participation in combatant or noncombatant military training and service by reason of his religious training and belief and he recommended that the appeal of the registrant be not sustained.

The Department of Justice finds that the registrant's claim is not sustained. It, therefore, recommends that the registrant's claim be not sustained by your Board.

The Selective Service Cover Sheet in the above case is returned herewith.

Sincerely,
T. Oscar Smith
Special Assistant to the Attorney General

Bouziden vs. United States of America

(Stamp)
Local Board No. 80
of Woods County
Mar 12 1956
American Legion Hut
Alva, Oklahoma

March 12, 1956

State Director, Selective Service System, 114 North Broadway, Oklahoma City, Oklahoma.

Re: Jimmy James Bouziden, SSN 34-80-33-15

Dear Sir: Attached herewith, please find a copy of the Federal Bureau of Investigation summary which the above named registrant requested to be placed in his Cover Sheet; also information concerning his marital status, changes of address, and a copy of the letter which Mr. Bouziden wrote to Mr. Lockwood Jones, Hearing Officer at Cordell, Oklahoma.

Yours very truly,
For The Local Board:

_____
Mary E. Haley, Clerk

Oklahoma State Headquarters
Selective Service System
114 North Broadway
Oklahoma City 2, Oklahoma 141-2

March 13, 1956

Appeal Board for the Selective Service System in the Western Federal Judicial District of the State of Oklahoma, Oklahoma City, Oklahoma.

Re: Jimmy James Bouziden, SS No. 34-80-33-15.

Gentlemen: Enclosed is additional information submitted by the above-named registrant after his cover sheet had been forwarded to your appeal board.

Bouziden vs. United States of America

This information should be included in the registrant's cover sheet to be considered by your appeal board.

Sincerely yours,
For The State Director:
John A. Livingston
Major, Artillery
Chief, Manpower Division

enclosure

Appeal Board, Western
Federal Judicial District
114 N. Broadway
Oklahoma City, Oklahoma

March 13, 1956

Mr. Jimmy James Bouziden, 320 N. Cascade, Colorado Springs, Colorado.

Dear Mr. Bouziden: Under the provisions of Section 1626.25(a)(2) of the Selective Service Regulations, the Appeal Board for the Selective Service System in the Western Federal Judicial District of the State of Oklahoma, forwarded your file to the United States District Attorney for an advisory recommendation by the Department of Justice concerning your conscientious objection claim.

Under current Selective Service procedure, before the Appeal Board may again consider your case, "the appeal board shall mail to the registrant a copy of the recommendation of the Department of Justice enclosed with a letter informing the registrant that, within thirty days after date of such mailing, he may file a written reply with the appeal board concerning the recommendation of the Department."

We are, therefore, enclosing your copy of the recommendation and if you wish you may write the Appeal Board within thirty days (thirty days from the date postmarked on the front of the envelope), in order that your letter and file may be considered by the Appeal Board at its next meeting.

Sincerely yours,
Wm. T. Payne
Chairman, Appeal Board
Western District

WTP.mc
Encls.
cc: State Headquarters
cc: Local Board No. 80
Woods County, Okla.
File

[Illegible Stamp]

April 15, 1956

Appeal Board, Western Federal Judicial District, 114 N. Broadway, Oklahoma City, Oklahoma.

Gentlemen: I hereby request that my letters and files be considered by the appeal Board at the next meeting.

Thanking you for your cooperation.

Sincerely,
Jimmy James Bouziden

Selective Service System.

Individual Appeal Record.

(Stamp)
Local Board No. 80
of Woods County
Jun 2-1955
American Legion Hut
Alva, Oklahoma
(Local Board Date Stamp)

(Stamp)
Received-Appeal Board
[Illegible]
Jun 6-1955
[Illegible]

(Stamp)
Mar 12 1956
Received State Headquarters
Jun 3-1955
Selective Service System
Oklahoma City, Okla.

Name of registrant Bouziden, Jimmy James
(Last) (First) (Middle)

Bouziden vs. United States of America

Selective Service Number 34 80 33 15

Classified by local board in Class I-A until _____ 194___

Date classified May 4, 1955

[x] Forwarded on appeal taken by Registrant asking for IV-D classification

Date forwarded to Appeal Board June 2, 1955

Mary E. Haley
Clerk of Local Board.

Selective Service System.

Order To Report For Induction

(Stamp)
Local Board No. 80
of Woods County
Jul 11 1956
Court House, Rm 6
Alva, Oklahoma
(Local Board Stamp)

Approval not required.

July 11, 1956
(Date of mailing)

The President of the United States,

To: Jimmy James Bouziden
(First name)(Middle name or initial)(Last name)

34 80 33 15
(Selective Service Number)

Mailing address 1912 East St. Vrain
(Number and street or R. F. D. route)
Colorado Springs Colorado
(City, town, or village)(Zone)(County)(State)

Greeting:

Having submitted yourself to a Local Board composed of your neighbors for the purpose of determining your availa-

bility for service in the Armed Forces of the United States, you are hereby ordered to report to the Local Board named above at Room No. 6, Court House, Alva, Oklahoma
(Place of reporting)
at 8:00 A.m., on the 24th of July, 1956, for forwarding to an
(Hour of reporting) (Day) (Month)
induction station.

(Member or clerk of Local Board)

United States Army
Recruiting Main Station
Will Rogers Field
Oklahoma City, Oklahoma

25 July 1956

(Stamp)
Local Board No. 80
of Woods County
Jul 30 1956
Court House, Rm 6
Alva, Oklahoma

United States Attorney, Federal Building, Oklahoma City, Oklahoma.

Dear Sir: On 25th July 1956, Jimmy James Bouziden, SS No. 34 80 33 15, whose address is 1912 East St. Vrain, Colorado Springs, Colorado, was forwarded to this station for induction by local Board No. 80, Woods County, Alva, Oklahoma.

Inasmuch as this Registrant refused induction, as indicated by enclosures herewith, the file is turned over for prosecution or such other action as you see fit under current regulations of the Selective Service Act.

Witnesses:

Virgil E Boight, 1st Lt, Inf, 4205 SU, US Army Recruiting Main Station, Will Rogers Field, Oklahoma City, Oklahoma.

Bouziden vs. United States of America

Clyde G Ford, 2nd Lt, AGC, 4205 SU, US Army Recruiting Main Station, Will Rogers Field, Oklahoma City, Oklahoma.

Robin M Ellis, Sp3, 4205 SU, US Army Recruiting Main Station, Will Rogers Field, Oklahoma City, Oklahoma.

Virgil E. Voight
1st Lt, Inf
Induction Officer

Encls
1. Certificate by Virgil E Voight, 1st Lt, Inf
2. Statement by Registrant dtd 25 Jul 56

July 25, 1956

I refuse to be inducted to be Inducted into Armed Services of the United States

Jimmy J. Bouziden

Witnesses:
Clyde G. Ford
2d Lt. AGC 04047741
4205 SU Ok Cty

Robin M. Ellis
Sp3. RA 17279956
4205 SU. Okla City

176] Clerk's Certificate.

United States of America,)
) SS
Western District of Oklahoma.)

I, R. Lee Jenkins, Clerk of the United States District Court for the Western District of Oklahoma, do hereby certify the above and foregoing to be a full, true and complete transcript of the pleadings, record and proceedings in Case No. 17,704-Criminal, United States of America, Plaintiff, vs. Jimmy James Bouziden, Defendant, as full, true and complete as the said transcript purports to contain and as called for by the designation of contents of record on appeal above set forth.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Oklahoma City, in said District this 31 day of May, 1957.

R. Lee Jenkins, Clerk

(Seal)

Filed United States Court of Appeals, Tenth Circuit, June 3 1957, Robert B. Cartwright, Clerk.

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
FEB 21 1958
JOHN T. FEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1957

No. 804

JIMMY JAMES BOUZIDEN, Petitioner

v.

UNITED STATES OF AMERICA

Petition for Writ of Certiorari to the United States Court of Appeals For the Tenth Circuit

---

HAYDEN C. COVINGTON
124 Columbia Heights
Brooklyn 1, New York
Counsel for Petitioner

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Supreme Court of the United States

OCTOBER TERM, 1957

No.

JIMMY JAMES BOUZIDEN, Petitioner

v.

UNITED STATES OF AMERICA

Petition for Writ of Certiorari to the United States Court of Appeals For the Tenth Circuit

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TO THE SUPREME COURT OF THE UNITED STATES:

Petitioner prays that a writ of certiorari issue in this case to review the judgment of the United States Court of Appeals for the Tenth Circuit, affirming the judgment of the United States District Court for the Western District of Oklahoma, convicting the petitioner for a violation of the Universal Military Training and Service Act.

OPINION BELOW

The opinion of the Court of Appeals has not yet been reported. It is printed, *infra,* pages 38 to 46, as Appendix A. There is no opinion of the District Court.

JURISDICTION

The judgment of the Court of Appeals was entered on January 29, 1958. See Appendix B, *infra*, page 47.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P. Title 18, Section 3231, U. S. C. confers jurisdiction on the trial court.

QUESTIONS PRESENTED

I.

Whether the denial of the conscientious objector classification by the appeal board was without basis in fact, making the final I-A classification arbitrary and capricious.

II.

Whether the recommendation of the Department of Justice upon the first appeal, that the conscientious objector status could be denied because of petitioner's belief in self-defense and theocratic warfare, was a denial of procedural due process of law before the appeal board because it was not retracted by the Department of Justice before the final I-A classification.

III.

Whether there was a denial of procedural due process of law before the appeal board by the Department of Justice in failing to supply petitioner the full FBI report so that he could make use of all the favorable evidence in said report in presenting his claim for classification as a conscientious objector to the appeal board and also in failing to supply the appeal board the full FBI report so that it could make use of all the favorable evidence in said report in considering petitioner's claim and in classifying him.

IV.

Whether petitioner was denied procedural due process of law before the appeal board and in the Department of Justice by the misleading and false statements made by the hearing officer of the Department of Justice, that the conviction for bootlegging of his uncle who had reared him would not be relied upon by the Department of Justice in making its recommendation to the appeal board, whereas such statements were relied upon by the Department.

V.

Whether petitioner was denied procedural due process of law by the Department of Justice before the appeal board because the recommendation by it to the appeal board contained unfair representations and illegal grounds for the denial of the conscientious objector claim and made serious omissions of facts favorable to the petitioner.

VI.

Whether reversible error was committed by the trial court in excluding from evidence as absolutely privileged the longhand notes of the hearing made by the hearing officer and also the typewritten report of the hearing officer to the Department of Justice upon the hearing conducted by him, which were demanded to prove a denial of due process of the hearing and before the appeal board and also to use in cross-examination of such hearing officer who testified as a witness for the Government.

VII.

Whether the trial court committed reversible error in excluding from the evidence as absolutely privileged the original full FBI investigative reports of the inquiries when they were offered for the material and relevant purpose of showing that the petitioner was denied procedural due process of law before the appeal board in that favorable evidence supporting his conscientious objector claim had not

been fully and adequately summarized and presented to the appeal board by the Department of Justice.

STATUTES AND REGULATIONS INVOLVED

Section 6 (j) of the Universal Military Training and Service Act (62 Stat. 604, 612, 622; 65 Stat. 75, 86 (50 U. S. C. App. § 456 (j))) is involved here. The pertinent part reads as follows:

> "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * * Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate ap-

peal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * * If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. * * *"

Section 1 (c) of the Universal Military Training and Service Act (50 U. S. C. App. § 451 (c)) provides:

"The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."

—June 24, 1948, ch. 625, title I, § 1, 62 Stat. 604, amended June 19, 1951, ch. 144, title I, § 1 (a) 65 Stat. 75.

Sections 1622.11, 1622.14, 1626.25 (a), 1626.25 (b) and 1626.25 (c) of the Selective Service Regulations (32 C. F. R. § 1602 *et seq.*) are involved. These regulations are extensive; so they are printed as Appendix C, *infra,* at pages 48 to 50.

STATEMENT OF THE CASE

Petitioner seeks review of the judgment of the United States Court of Appeals for the Tenth Circuit, affirming a judgment of the United States District Court for the Western District of Oklahoma. (See Appendix B, *infra* at page 47.) The judgment of the District Court was entered after trial without jury finding petitioner guilty of refusing to submit to induction into the armed forces in violation of the Universal Military Training and Service Act. [R. 10, 11]

Petitioner was indicted for refusal to submit to induction into the armed forces on July 25, 1956, at Oklahoma City, Oklahoma, contrary to the Universal Military Training and Service Act. [R. 4-5] He pleaded not guilty. [R. 11] On April 17, 1957, he consented to a trial to the court without a jury. Evidence was heard. [R. 11] At the close of the evidence a motion for judgment of acquittal was made that was overruled, followed by a finding of guilty. [R. 11-12] Petitioner was sentenced to serve two years in the custody of the Attorney General. [R. 10, 11] He duly and timely filed his notice of appeal to the Court of Appeals [R. 10-11]

The Court of Appeals affirmed the judgment of the trial court by judgment entered on January 29, 1958. (Appendix B, *infra,* page 47.) An opinion was written stating reasons for the affirmance. (Appendix A, *infra,* pages 38 to 46.)

Bouziden registered with his draft board on February 21,

1951. [R. 88] On March 4, 1952, he filed a classification questionnaire, showing that he was a minister and had been since July, 1942, in the organization known as Jehovah's Witnesses. [R. 89] He showed that he was born at Auburn, California, on February 21, 1933. [R. 89] The conscientious objector blank of the form was signed by him certifying that he was opposed to participation in war, because of religious training and belief. [R. 90] He sought a minister's exemption, or a IV-D classification. [R. 90]

Bouziden filed a conscientious objector form on March 11, 1952. [R. 90] This form showed that he was opposed to both combatant and noncombatant military service and that he was entitled to be exempted from all training and service, Class I-O, the conscientious objector classification. [R. 94-97]

The local board classified him I-A. [R. 90] On April 16, 1952, he was reclassified I-A following his first personal appearance. He appealed his case and his file was sent to the district appeal board. [R. 91] On May 21, 1952, his case was referred to the Department of Justice for an advisory recommendation on his conscientious objector claim. [R. 91]

Following investigation and hearing in the Department of Justice the Assistant Attorney General recommended to the appeal board that Bouziden be denied his conscientious objector status because he believed in theocratic warfare and in self-defense, being willing to fight to protect himself and his fellow servants of God. [R. 98-99] The Department of Justice recommended that because of these religious beliefs the petitioner was not entitled to the conscientious objector classification. [R. 98-99] Basing their decision on this recommendation the appeal board classified Bouziden in I-A. [R. 91] He was ordered to submit to induction on May 25, 1953. He reported and refused to submit, which resulted in his prosecution. [R. 92] This was dismissed on April 21, 1955. The State Director then ordered the case of Bouziden reopened and directed that petitioner be reprocessed. [R. 92]

On May 4, 1955, the local board reclassified Bouziden I-A. [R. 92] Following a personal appearance he was again classified I-A. [R. 92-93] From this he appealed, resulting in his case being again referred by the appeal board to the Department of Justice for investigation, hearing and recommendation upon the conscientious objector claim. [R. 93]

Following the investigation petitioner was sent copies of the résumé of the FBI investigations dated July 16, 1952, and September 22, 1955. He was notified that he was to appear before Maurice Evenson, a hearing officer of the Department of Justice, on January 6, 1956. [R. 41, 121]

On December 21, 1955, Bouziden wrote the hearing officer that he wanted a copy of the original FBI report sent to him and to the appeal board, to find out "all of the favorable as well as the unfavorable evidence." [R. 121] As to the adverse evidence he said he needed the FBI report so as to "identify the source of information and know who the informants are in order to be able to answer the information or challenge the informants because of evil motive, lack of knowledge or other grounds." [R. 121] He concluded that he did not want to call informants or cross-examine them or delay the proceedings. [R. 122] The FBI report was not supplied to Bouziden or to the appeal board, as requested. [R. 58-59]

The résumé of July 16, 1952, contained prejudicial and adverse statements. The members of the local draft board were reported to believe that Bouziden "was merely trying to evade military service." [R. 110] Neighbors believed that Bouziden could not be a conscientious objector because he was reared "in the home of his uncle who was a convicted bootlegger in Woods County, Oklahoma." [R. 111] Another informant stated that Bouziden was "of questionable character and reputation and that his entire family are of poor character and reputation in the community." [R. 111] These statements were repeated by former Woods County officials and neighbors. [R. 111-112]

Another informant stated that Bouziden used profanity

on several occasions. Another informant, an employee of a company in Wichita, Kansas, said he recalled petitioner drinking and visiting pool parlors. He had never seen the petitioner drink more than two beers but had seen him drink a bourbon and soda at a company party. [R. 112-113]

The résumé dated September 22, 1955, showed that Bouziden lived in an apartment house operated by a woman "who was later arrested and convicted for operating an abortion ring on the premises." [R. 113] She was shown to have owned several apartment houses in the one block where he lived. [R. 113] A police official of Wichita, Kansas, reported that two of the landlady's apartments were rented where "five women were found on the premises who were there to arrange for abortions." [R. 113] The police official also reported that a young lady "was found in the hallway of the bachelor apartments, located in the same block." [R. 113] This woman had an arrest record on morals charges and had been convicted of fornication. [R. 113] Reference was made to the conviction and imprisonment of the landlady in the Lansing State Prison. [R. 113]

The convicted woman was interviewed by the FBI in prison. [R. 114] She said that petitioner began living on her premises in "her motel in late 1952." Later petitioner and his brother moved "in to one side of a duplex house which she owned in the block where the aforementioned raid took place." [R. 114] The convicted woman reported to the FBI that a girl came to her in 1952 who was pregnant. The woman said she took care of the girl and helped arrange the adoption of her baby. She afterward had the girl work for her as "manager of the motel in which the registrant and his brother lived." [R. 114] The woman stated that petitioner's "brother began keeping company with her" and that the three of them went out together, but that petitioner was not known "to have a date with any girl." [R. 114] The landlady is reported as saying: "The young girl became pregnant again by the registrant's brother and went to Oklahoma to have the baby." [R. 114] The landlady said

that she did not know whether petitioner "was aware that his brother was intimate with the young girl" and whether "the registrant or his brother knew that she operated an abortion ring and kept girls that were illegitimately pregnant in her home, while the registrant and his brother rented an apartment from her in the same block." [R. 114]

The résumé then quoted the young girl as saying that "she never had any dates with the registrant." [R. 114] She added that she "knew of no bad habits which the registrant had and stated that she has had no contact with him for about the past four years." [R. 114] The résumé shows that the young woman who was found in the hallway of the bachelor apartments and who was convicted of fornication advised that she was not "acquainted with any party by the name of Bouziden." [R. 115] The résumé refers to a statement by another girl who "had heard a rumor about three years ago that the young girl, who was not married, was pregnant." [R. 115] This woman saw the girl who got pregnant in a night club with "two dark-complexioned young men, one of whom she thought was the registrant's brother." [R. 115]

A police official of Wichita was reported saying that a warrant had been issued against the petitioner for failure to appear in answer to a parking ticket issued on August 9, 1954. [R. 116] He reported a second traffic warrant dated March 11, 1954, for operating a car with "an illegal muffler on his automobile." [R. 116] The résumé states that the police records at Pratt, Kansas, showed petitioner "was arrested on October 4, 1954, for running a stop sign" and that petitioner was "very belligerent." [R. 116]

The résumé later on states that one informant at Pratt, Kansas, a co-worker with petitioner, "at the end of a day when both he and the registrants [sic] were hot and dry, and at his suggestion, they visited a bar and had a beer." [R. 117-118] This informant recalled that Bouziden stated "he formerly lived in an apartment of a lady in Wichita, who was later arrested for operating an abortion ring." [R. 118]

The résumé quotes a member of the draft board to the effect that petitioner "was not sincere in his conscientious-objector claim." [R. 119] The board member reported to the FBI that petitioner refused a conscientious objector classification, "claiming to be a minister in Jehovah's Witnesses and wishing a IV-D classification." [R. 119]

The FBI résumé stated: "It is noted that most persons interviewed believed that the registrant's home environment, being raised by an uncle who was a convicted bootlegger, is inconsistent with his claim of being a conscientious objector, based upon his religious training and beliefs." [R. 120]

On January 4, 1956, the petitioner by letter replied to the résumé. He denied that the draft board members could judge his motives. [R. 124] He complained of the résumé judging him because of the conduct of other persons. He asked a question about the fairness of this, saying: "The reason I ask this is because this is exactly what the résumé has done to me." [R. 124] He explained that his uncle, who had been convicted of bootlegging, had changed since "the early forties" when he became one of Jehovah's Witnesses. [R. 124] He also explained about his irregular attendance at meetings of Jehovah's Witnesses because of his having to travel from different places, which kept him away from his local congregation. [R. 125]

Concerning the statement made in the second résumé dated September 25, 1955, about the woman convicted of operating an abortion ring he said: "It is true that I resided there for a short time but, I knew nothing of her activities or personal dealings. It was not until I moved to Pratt, Kansas and a good deal of time later that through the Newspaper that I learned of what she had done." [R. 125] The petitioner added that his brother had been accused of a serious offense in his dealings with the young girl who became pregnant and then added: "I recall that he dated a girl which may be the one mentioned, I have no knowledge

of his personal affairs and am unable to answer for him." [R. 125]

A hearing was conducted before the hearing officer of the Department of Justice at Pueblo, Colorado, on January 6, 1956. [R. 129] Petitioner was accompanied by his brother, Richard Bouziden, and Petitioner's wife, Jaree. The hearing officer told petitioner that he had some questions that he would like to ask him and that Bouziden would merely answer the questions put to him. [R. 15, 33] The hearing officer asked Bouziden several questions about his background. [R. 33] He inquired about his occupation and earnings. [R. 33-34] He asked Bouziden if he smoked and Bouziden replied that he did not. [R. 15, 34] He then asked Bouziden if he was a drinker and he said no. [R. 15, 34, 59] He then asked Bouziden if he had ever been arrested and Bouziden replied he never had been. [R. 15, 34]

Bouziden admitted to the hearing officer that he drank beer now and then. [R. 17, 36-37, 59] Petitioner was asked what church he belonged to and he told the hearing officer Jehovah's Witnesses. [R. 15, 34] The hearing officer wanted to know how a person became one of Jehovah's Witnesses, and Bouziden told him that it was through study of the Bible, attending meetings and through baptism, and that was how "he got his ordination." [R. 15-16, 34] The hearing officer then asked Bouziden if he had ever been arrested and he said that he had not. [R. 15] He asked the petitioner whether he refused to bear arms. Bouziden told him that as one of Jehovah's Witnesses he did refuse. [R. 34]

The hearing officer asked Bouziden whom he was living with when he became one of Jehovah's Witnesses and he answered that it was his aunt and uncle, who had raised him. [R. 34] The hearing officer wanted to know if Bouziden believed in self-defense and whether he would defend himself and his family. Bouziden answered that he would. [R. 34] The hearing officer then wanted to know if Bouziden believed in participation in theocratic warfare. Bouziden told him that while he believed in theocratic warfare he

would not participate in it since Jehovah God and Christ Jesus "would fight the final battle." [R. 35]

The hearing officer then inquired about petitioner's record in the ministry as one of Jehovah's Witnesses. [R. 35] He further inquired if petitioner was a minister and if his brother was a minister. Bouziden told him that they were ministers. [R. 35]

The hearing officer wanted to know about the religious youth program of Jehovah's Witnesses. Bouziden told him that they attended the theocratic ministry school and meetings of Jehovah's Witnesses. [R. 35-36]

Upon the hearing the hearing officer informed the petitioner that he had seen in the résumé of the FBI report about the conviction of his uncle for bootlegging and added that it "isn't important, that we wouldn't even discuss that." [R. 60]

Upon the trial of this case the hearing officer admitted that he had possession of and used the original, full FBI report. He had read it before the hearing and compared it with the résumé. [R. 51] He testified that the full report was three or four times more voluminous than the summary. [R. 50-51] The petitioner subpoenaed the full FBI report which was called for at the trial by the petitioner. [R. 51-56, 81-82] The court sustained the objection of the Government that the documents were privileged and excluded the FBI report. [R. 53-56, 81-82] The FBI report was offered by the petitioner for the purpose of showing that favorable and beneficial evidence supporting the conscientious objector claim of the petitioner was withheld from the appeal board and the original FBI report was material so that it could be compared with the résumé made by the Department of Justice to determine whether favorable evidence had been withheld from the appeal board. [R. 54-55] The trial court refused to make an in camera inspection. [R. 46-47, 55-56]

The Department of Justice wrote a letter to the appeal board recommending against sustaining the conscientious objector claim. [R. 128-131] The Department epitomized

the report of the hearing officer based on the hearing of January 6th. [R. 129-131] The letter quoted the hearing officer as finding that Bouziden (1) "appeared to be evasive"; (2) "seemed to lack a knowledge of the Bible in general"; (3) first said that he did not drink and then admitted that he had drunk intoxicating liquor and still drinks beer; (4) first stated he never had been arrested and later admitted that he had been in trouble with the police, referring to the police records of Wichita and Pratt, Kansas; (5) stated he believed in self-defense and that he would "take a stand against foreign invaders in the protection of himself, his family, his property and his brothers in the faith"; (6) stated that all of Jehovah's Witnesses were ministers; and (7) was not against noncombatant service "as such but felt that he could not participate in it because it would interfere with his ministerial duties." [R. 129-130]

The Department of Justice summarized the report of the hearing officer about the testimony given by Richard Bouziden, brother of the registrant, finding that the brother said that (1) petitioner should learn more about the Scriptures; (2) he and petitioner drank alcoholic beverages "once in a while" and (3) after being pressed, admitted that he was convicted for violation of the draft law in 1944 and spent two years in the penitentiary at El Reno. [R. 130-131]

Upon the trial petitioner and his two witnesses denied that he had appeared to be evasive. [R. 16, 17, 36, 59] Petitioner also testified that the hearing officer did not ask about any Bible questions. [R. 17, 36, 59] Petitioner and his witnesses also testified that the report by the hearing officer on drinking of intoxicating liquor was incorrect. They said that the hearing officer asked Bouziden if he was a drinker and he said no, admitting that he drank beer occasionally but not hard liquor. [R. 17, 36, 59]

Petitioner and his witnesses also said that the hearing officer questioned Bouziden about his being arrested, which he denied, saying that he had never received any sort of

summons but only traffic tickets, which were not arrests, as stated in the résumé. [R. 18, 37, 60] Petitioner and his witnesses testified that the hearing officer was wrong when he reported that petitioner was unable to answer how one became one of Jehovah's Witnesses but that Bouziden did answer the question thoroughly and completely. [R. 18, 60-61] Petitioner and his witnesses explained that the hearing officer was in error about Bouziden's record card not having been transferred from Pratt, Kansas, to Colorado Springs. [R. 20, 61]

The hearing officer was subpoenaed and put on the witness stand by the petitioner, who demanded that he produce his longhand notes at the hearing and also to produce a copy of his typewritten report to the Department of Justice in Washington about the hearing conducted by him at which the petitioner appeared and gave evidence. [R. 41-48] The Government objected that the documents were privileged. [R. 43, 45, 48] The petitioner showed that such documents were needed also to show that the report of the hearing was biased and one-sided and contained misrepresentations as to the conduct of the petitioner [R. 43-44] and that such documents were material and relevant for that purpose. [R. 43-50] The court sustained the objection. [R. 50, 80]

The hearing officer was recalled to the witness stand as a witness for the Government for the purpose of contradicting the testimony of the petitioner and his witnesses about what took place at the hearing. [R. 82-83] On cross-examination it developed that the hearing officer had made longhand notes as to what was said at the hearing and in his typewritten report to the Department of Justice he also recorded what took place at the hearing. [R. 83-85] Petitioner then called upon the court to compel the witness to produce his longhand notes and the typewritten report for the purpose of testing the credibility of the witness. [R. 84-85] The court sustained the objection of the Government and refused to compel the production of the documents for use of counsel in cross-examining the witness. [R. 85-86]

The Department of Justice, in its recommendation to the appeal board, also summarized the conclusions of the hearing officer that petitioner (1) "failed to show sincerity and good faith" through his general appearance and conduct at the hearing and (2) was not opposed to military service "by reason of his religious training and belief." [R. 131]

The Department in conclusion recommended to the appeal board that the claim be not sustained, for all the reasons set forth in the recommendation. [R. 131]

A copy of the recommendation of the Department of Justice was mailed to petitioner on March 13, 1956. [R. 133] Bouziden said that he figured that since the Department of Justice had already found against him and recommended to the appeal board that his claim be denied "there just wasn't any use" to make any reply. [R. 65] He merely wrote the appeal board as follows: "I hereby request that my letters and files be considered by the appeal board at the next meeting." [R. 134] Through an earlier letter he had answered the unfavorable evidence in the résumé relied upon by the Department of Justice. [R. 72, 124-125]

On June 21, 1956, the file was returned from the appeal board to the local board with a I-A classification by the appeal board. This constituted a denial of the conscientious objector claim as recommended by the Department of Justice. [R. 93] On July 11, 1956, the local board ordered petitioner to report for induction on July 24, 1956. On July 25, 1956, petitioner refused to submit to induction into the armed forces. [R. 136-137]

REASONS FOR GRANTING THE WRIT

I.

The documentary evidence submitted by Bouziden establishes that he had sincere and deep-seated conscientious objections against his participation in combatant and noncombatant military service that were based on his "relation to a Supreme Being involving duties superior to those arising

from any human relation." This material also showed that his belief was not based on "political, sociological, or philosophical views or a merely personal code," but that it was based upon his religious training and belief as one of Jehovah's Witnesses, being deep-seated enough to drive him to enter into a covenant with Jehovah and dedicate his life to the ministry. [R. 94-97, 101-103, 128-131]

The decision of the court below is in direct conflict with the holdings in other cases decided by other courts of appeals. In those cases the appellants, like petitioner here, were Jehovah's Witnesses. They showed the same religious belief, the same objection to service and the same religious training. While different speculations were relied upon by the Government which were discussed and rejected by the courts in those cases, the courts were also called upon to say, on facts identical to the facts in this case, whether there was basis in fact. See *Jessen* v. *United States,* 212 F. 2d 897 (10th Cir. 1954), where the court below (after following *Taffs* v. *United States,* 208 F. 2d 329 (8th Cir. 1953)) said: "The remaining question is whether there was any basis in fact for the classification made by the State Appeal Board."

The holdings of the courts of appeals with which the holding of the court below (that there was basis in fact for the denial of the classification) directly conflicts are: *Pine* v. *United States,* 212 F. 2d 93 (4th Cir. 1954); *Annett* v. *United States,* 205 F. 2d 689 (10th Cir. 1953); *United States* v. *Pekarski,* 207 F. 2d 930 (2d Cir. 1953); *Taffs* v. *United States,* 208 F. 2d 329 (8th Cir. 1953); *Jewell* v. *United States,* 208 F. 2d 770 (6th Cir. 1953); *United States* v. *Hartman,* 209 F. 2d 366 (2d Cir. 1954); *Weaver* v. *United States,* 210 F. 2d 815 (8th Cir. 1954); *Jessen* v. *United States,* 212 F. 2d 897 (10th Cir. 1954); *United States* v. *Close,* 215 F. 2d 439 (7th Cir. 1954); *United States* v. *Wilson,* 215 F. 2d 443 (7th Cir. 1954).

It may be argued that, because petitioner had been involved in traffic violations and had occasionally drunk beer and was known at one time to take one drink of bourbon

whisky, he is not a conscientious objector. [R. 112-121] This contention has been specifically considered and rejected in *Rempel* v. *United States,* 220 F. 2d 949 (10 Cir. 1955), which approved a similar holding made in *Chernekoff* v. *United States,* 219 F. 2d 721 (9th Cir. 1955). These peccadillos of the petitioner do not, therefore, give any basis in fact for the denial of the conscientious objector status to the petitioner. The decision below conflicts with these two cases.

It may also be argued that, because petitioner was not up to or above the average in ministerial activity of Jehovah's Witnesses, such shortcomings on his part show that he is not entitled to the conscientious objector classification. [R. 129-131] This point was specifically considered and rejected in *Riles* v. *United States,* 223 F. 2d 786 at page 793 (5th Cir. 1955). See the last paragraph of the opinion in that case.

In the event that this Court does not find a conflict between the decision of the court below and the above-cited decisions by other courts of appeals, then it is submitted that whether the petitioner was denied the full conscientious objector status without basis in fact by the appeal board is an important question of wide public and national importance in the administration of the draft law sufficient to warrant the granting of the writ of certiorari in this case. The identical question was stated in the petition as grounds to warrant the granting of the writ in *Witmer* v. *United States,* 348 U. S. 375 (1955). This Court found it important enough to grant the writ in that case. The importance of the same question raised in that case was basis for granting the writ there. By force of the same reason it should be held again to be sufficient reason to grant the writ here.

II.

The holding of the court below, that the recommendation of the Department of Justice to the appeal board that the conscientious objector status could be denied to the petitioner because of his belief in self-defense and theocratic

warfare, is out of harmony with the holding of this Court in *Sicurella* v. *United States*, 348 U. S. 385 (1955). The reasons stated by the court below for this holding appear in Appendix A, *infra*, at pages 45 to 46.

The first recommendation of the Department of Justice to the appeal board was that the petitioner was not entitled to the conscientious objector classification because he believed in self-defense and in theocratic warfare. [R. 98-99] In the second hearing in the Department of Justice the hearing officer emphasized the belief of petitioner in theocratic warfare. [R. 16, 34-35] He also emphasized the willingness of the petitioner to defend himself. [R. 34] The recommendation of the Department of Justice to the appeal board upon the first appeal, dated December 4, 1952, was in the draft board file that went up to the appeal board on the second appeal in 1956. [R. 97-99] In the second recommendation by the Department of Justice reference is made to the first hearing "before another Hearing Officer." [R. 128] In the final recommendation to the Department of Justice the attention of the appeal board is specifically directed to the beliefs of the petitioner in theocratic warfare and in self-defense. [R. 128-129] Nowhere in the final recommendation by the Department of Justice to the appeal board is the appeal board directed not to consider petitioner's belief in theocratic warfare or self-defense. [R. 128-131] It must be assumed and presumed that the appeal board relied upon belief of the petitioner in self-defense and in theocratic warfare in reaching its opinion that petitioner was not entitled to classification as a conscientious objector.

The Act and the Regulations do not permit the Department of Justice to recommend, or the appeal board to accept, the recommendation, that willingness to defend oneself or belief in theocratic warfare is basis in fact for the denial of the conscientious objector status.

Section 6 (j) provides for the recommendation of the Department of Justice. This is implemented by Section 1626.25 of the Regulations. These make the recommendation

a vital link in the chain of administrative proceedings. It is necessary that the Department of Justice proceedings be in accordance with law; otherwise the draft board proceedings are void.—*Sicurella* v. *United States,* 348 U. S. 385 (1955).

The refusal by the Department of Justice to follow the definition of a conscientious objector fixed by Congress in the Act was equivalent to a complete denial of any hearing at all. A "hearing proceeding upon an erroneous theory . . . is no better than no hearing at all."—*Shepherd* v. *United States,* 217 F. 2d 942, 946 (9th Cir. 1954); see also *Sicurella* v. *United States,* 348 U. S. 385 (1955).

In the event that the Court does not find that the holding of the court below is out of harmony with *Sicurella* v. *United States,* 348 U. S. 385 (1955), then, it is submitted, this is an important question of wide public and national importance in the administration of the draft law sufficient to warrant the granting of the writ in this case.

III.

An important question in the administration of the draft law is here presented to this Court for determination which has not been decided by this Court but which should be determined by it. It is whether the Department of Justice was required to supply petitioner with the full FBI report so that he could make use of all of the favorable evidence in said report supporting his claim for classification as a conscientious objector.

The Department of Justice denied the petitioner procedural due process of law by failing to send to the appeal board the full FBI report so he could make use of all the favorable evidence given by informants and other persons interviewed by the FBI in the course of the investigation of the conscientious objector claim of petitioner, as requested by petitioner. [R. 109] This constituted a denial of a full and fair hearing before the appeal board contrary to Section 6 (j) of the Act, the Regulations and the Constitution of the United States.

The testimony of the hearing officer, who had possession of the original FBI report and compared it with the summary made, showed that there was considerable material omitted from the summary. He said that the original report was three or four times as voluminous as was the summary. [R. 50-51] This shows that there was material omitted. Petitioner can safely argue that the record shows that favorable evidence was omitted. The holding of the court below that *United States* v. *Nugent,* 346 U. S. 1 (1953), was not overruled or modified by *Jencks* v. *United States,* 353 U. S. 657 (1957), is explained in the opinion of the Court of Appeals at pages 40 to 43, *infra,* Appendix A.

It is true that in the final recommendation of the Department of Justice to the appeal board it is implied that the evidence gathered by the FBI report appears in the résumé. But nowhere in the résumé or the recommendation does it appear that the résumé contains a summary of all the favorable evidence turned up by the FBI investigation. The Court must speculate to say that the résumé does contain all of the favorable evidence. This Court has prohibited any speculation in determining whether the draft boards and the Department of Justice have complied with the procedural due process requirements.—*Simmons* v. *United States,* 348 U. S. 397, 404-406 (1955); *Gonzales* v. *United States,* 348 U. S. 407, 414-417 (1955); compare *Steele* v. *United States,* 240 F. 2d 142 (1st Cir. 1956).

It is submitted therefore that the holding of the court below is an erroneous holding. The exclusion of the documentary evidence from the record by the Department of Justice, and the Department's withholding it from the appeal board, constituted a deprivation of procedural due process of law. It was for the appeal board, not the Department of Justice, to say whether or not the evidence was relevant or material. —*White* v. *United States,* 215 F. 2d 782, 789-790 (9th Cir. 1954); cert. denied 348 U. S. 970 (1955). The Department of Justice performed only an advisory function.—Com-

pare *United States* v. *Nugent*, 346 U. S. 1 (1953); *Imboden* v. *United States*, 194 F. 2d 508 (6th Cir. 1952).

In *United States* v. *Nugent*, 346 U. S. 1 (1953), it was held that providing a summary of the unfavorable evidence to the registrant was enough. But the Court in that case did not rule upon the question of whether or not all the favorable evidence appearing in the FBI report should be submitted to the appeal board. The reason why the favorable evidence should be considered by the appeal board is that the Department of Justice made an adverse recommendation to it. It was the responsibility of the appeal board to consider all the favorable evidence turned up by the FBI in its inquiry because such favorable evidence may have exculpated the petitioner from the adverse recommendation to the appeal board.—*White* v. *United States*, 215 F. 2d 782, 789-790 (9th Cir. 1954); cert. denied 348 U. S. 970 (1955).

This Court ought to reconsider *United States* v. *Nugent*, 346 U. S. 1 (1953) which is here requested. The United States Court of Appeals for the District of Columbia in *Communist Party of United States* v. *Subversive Activities Control Board*, — F. 2d — (No. 11850, Jan. 9, 1958), held that the rule in *Jencks* v. *United States*, 353 U. S. 657 (1957), applies to proceedings in administrative tribunals. There is a conflict between the holding below and it.

IV.

An important question in the administration of the draft law is here presented to the Court which has not been heretofore decided by it but which should be determined by it. It is whether the petitioner was denied procedural due process before the appeal board by misleading false statements of fact and unfair representations to the appeal board as a basis for the denial of the conscientious objector claim appearing in the recommendation and in the résumé of the FBI report. The reasons stated in the opinion of the court below for this holding appear in Appendix A, *infra*, at pages 44 to 45.

Upon the last hearing in the Department of Justice the hearing officer made reference to the conviction of the uncle, who raised petitioner, for bootlegging. The hearing officer, however, informed the petitioner that that "wasn't important, that we wouldn't even discuss that." [R. 60]

The Department of Justice in making its final recommendation did not carry out the statement made by the hearing officer to the petitioner that the conviction was not relevant and would not be used. In the recommendation there were referred to and annexed the résumés of the FBI inquiries. These inquiries emphasized to the appeal board the convictions of petitioner's uncle as a bootlegger. [R. 111-112, 119-120] The final recommendation of the Department of Justice to the appeal board nowhere instructs the appeal board not to consider the conviction of the petitioner's uncle. [R. 128-131]

It is submitted that it was highly unfair and prejudicial to petitioner to call to the attention of the appeal board as relevant and material the evidence turned up by the FBI investigation that petitioner's uncle had been convicted of bootlegging. It was entirely irrelevant and immaterial. It had no connection with the sincerity and conscientious objections of the petitioner. Petitioner informed the Department of Justice that he was not responsible for the character and conduct of his uncle. [R. 124] It was incumbent upon the Department of Justice to write the appeal board and specifically direct the appeal board not to regard such highly prejudicial, irrelevent and immaterial fact appearing in the résumé of the inquiry by the FBI.

The résumé of the inquiry dated September 22, 1955, devoted itself mainly to the immoral and disgraceful practices of petitioner's neighbors and his landlady in Wichita, Kansas. [R. 113-121] The résumé on its face showed that the petitioner was not in any degree responsible for or even connected with the immoral and illegal practices of his neighbors and the landlady. [R. 113-121] The landlady, who was convicted for running an abortion ring in the neighbor-

hood, exonerated petitioner in the statement that she made to the FBI. [R. 114] The young girl that was rumored to have been pregnant by some other man and who managed the motel owned by petitioner's landlady also exonerated petitioner. [R. 114-115]

The Department of Justice forwarded this résumé to the appeal board with knowledge that petitioner had absolutely no connection whatever with the immoral and illegal acts of petitioner's landlady and his neighbors in Wichita, Kansas. Knowing as it did that petitioner had no connection with these illegal acts described in the résumé it was the responsibility of the Department of Justice to delete and omit the highly irrelevant, immaterial and prejudicial statements appearing in the résumé. This was specially true after petitioner specifically directed the attention of the Department of Justice to the irrelevancy of such illegal acts and conduct. [R. 125] The Department of Justice, nonetheless, submitted the highly prejudicial, irrelevant and immaterial résumé to the appeal board along with its adverse recommendation. The Department underscored the résumé containing the highly prejudicial, irrelevant and immaterial facts when in its report it informed the appeal board that the résumé was "made a part hereof" and marked the résumé as Exhibit B. [R. 129] The Department having done this without any explanation or instruction to the appeal board, the appeal board could logically assume that the Department of Justice made its adverse recommendation because of the bad character and immoral and illegal acts of petitioner's landlady and neighbors. [R. 129-131]

Section 6 (j) of the Act and the Regulations authorizing the inquiry and recommendation confine the inquiry to the good faith of the registrant. It is the conduct of the registrant that is involved and that alone. What his neighbors know about his sincerity is, of course, relevant and material. But what the FBI agents dig up about the conduct of the registrant's neighbors and other persons, for which he is

not responsible, are not proper matters for inquiry and should not be included in the FBI report or résumé.

The inclusion of the irrelevant, immaterial and poisonous résumé in the draft board record forwarded to the appeal board was damaging. It is as harmful as sending documents to the appeal board behind the back of the registrant. —*Sheats* v. *United States,* 215 F. 2d 746 (10th Cir. 1954); *Gonzales* v. *United States,* 348 U. S. 407 (1955).

The recommendation of the Department of Justice and the résumé constitute a chain in the Selective Service process. (*Annett* v. *United States,* 205 F. 2d 689 (10th Cir. 1953); *Sicurella* v. *United States,* 348 U. S. 385 (1955)) The breaking of this chain by the illegal action of the Department of Justice here complained of makes void the I-A classification by the appeal board.—*Sicurella* v. *United States,* 348 U. S. 385 (1955); compare *United States* v. *Romano,* 103 F. Supp. 597 (S.D. N.Y. 1952).

It is submitted that the above question is sufficiently important and of such wide national scope in the administration of the draft law that this Court ought to grant the writ of certiorari to determine it.

V.

The holding of the court below finding that no error was committed by the trial court in excluding from the evidence the longhond notes of the hearing officer and the typewritten report of the hearing officer to the Department of Justice is out of harmony with the holding of this Court in *Jencks* v. *United States,* 353 U. S. 657 (1957), and in direct conflict with *United States* v. *Beekman,* 155 F. 2d 580, 582-584 (2d Cir. 1946); *United States* v. *Andolschek,* 142 F. 2d 503 (2d Cir. 1944); and *United States* v. *Krulewitch,* 145 F. 2d 76 (2d Cir. 1944).

The holding of the court below, that *Jencks* v. *United States,* 353 U. S. 657 (1947), does not support the petitioner in his demand for the production of the longhand notes and the typewritten report of the hearing officer for the purpose

of establishing a denial of due process at the hearing in the Department of Justice and to impeach the hearing officer, a witness for the Government, appears at pages 43 to 44, Appendix A, *infra*.

It is to be noted that the court below, in its opinion, inadvertently restricted the assignment of error made by petitioner to the exclusion of the longhand notes made by the hearing officer. See Appendix A, *infra*, at pages 39, 43-44. The statement of points for reversal of the case filed by petitioner in the court below in paragraph IX at page 3 of the record described the point as follows:

> "The trial court committed reversible error in holding that the hearing officer of the Department of Justice, Maurice A. Evenson, was privileged from producing his written report of the hearing conducted by him made to the Department of Justice and in excluding the report from the evidence which was shown to be material and relevant to the issues of the case at the time of the exclusion." [R. 3]

The petitioner in his brief filed in the court below made the point broader. Point Six of the brief was as follows:

> "Reversible error was committed by the trial court in excluding from evidence the longhand notes of the hearing and the report of the hearing officer to the Department of Justice upon the hearing conducted by him, which were material and relevant."

It is submitted that the petitioner was seeking not only the longhand notes made by the witness but also the official typewritten report of the hearing made to the Department of Justice.

Upon the trial the petitioner sought to obtain and put into evidence the longhand notes made by the hearing officer at the hearing and his typewritten report to the Department of Justice about the hearing. [R. 43-47, 47-50, 80, 84-86] The record showed an effort on the part of the peti-

tioner to establish a denial of procedural due process of law by the hearing officer conducting an unfair hearing and in making a biased, untrue and one-sided report of the hearing to the Department of Justice. [R. 16-30, 33-41, 73-78]

The hearing officer was recalled as a witness for the Government and denied two items of the testimony given by petitioner and his witnesses. [R. 82-84] After giving this testimony his credibility was involved, and petitioner, as the record shows, again demanded the notes and the report of the hearing officer for the purpose of impeaching the Government's witness on cross-examination. [R. 83-84]

It has been held that, when the minutes or report made by the hearing officer are needed for the purpose of determining whether there was a denial of procedural due process at the hearing or in the recommendation, the documents can be compulsorily produced, notwithstanding the privilege claimed by the Attorney General, as was done in this case. —*United States* v. *Erikson*, 149 F. Supp. 576, 580 (S.D. N.Y. 1957).

This holding is not in conflict with *United States* v. *Stasevic*, 117 F. Supp. 371 (S.D. N.Y. 1953), where the court quashed a subpoena *duces tecum* commanding the production of the hearing officer's report when it was called for only to show that there was a missing link in the chain of proceedings. The statute and the regulations, the court held, called only for the final recommendation by the Department of Justice. *United States* v. *Stasevic*, 117 F. Supp. 371 (S.D. N.Y. 1953), did not involve a situation where the document was needed to establish the denial of procedural due process of law at the hearing and in the Department of Justice. The case of Bouziden is identical to that of *United States* v. *Erikson*, 149 F. Supp. 576 (S.D. N.Y. 1957), and distinguishable, therefore, from *United States* v. *Stasevic*, 117 F. Supp. 371 (S.D. N.Y. 1953).

The longhand notes and the typewritten report of the hearing officer were relevant when first demanded, because petitioner intended to use them to corroborate the testimony

of his witnesses that the hearing officer had denied a full and fair hearing. (*United States* v. *Andolschek*, 142 F. 2d 503 (2d Cir. 1944)) When the hearing officer took the stand and attempted to contradict the testimony of petitioner and his witnesses the longhand notes and the report of the hearing officer to the Department of Justice became more vitally material and relevant.—*United States* v. *Beekman*, 155 F. 2d 580, 582-584 (2d Cir. 1946); *United States* v. *Krulewitch*, 145 F. 2d 76, 78-79 (2d Cir. 1944); *Jencks* v. *United States*, 353 U. S. 657, 671 (1957).

In the event that this Court does not find that the holding below is out of harmony with *Jencks* v. *United States*, 353 U. S. 657 (1957), or that there is no conflict between the holding of the court below and the decisions of the other courts of appeals on this question, then it is respectfully submitted that this is such an important question of great national scope in the administration of the criminal sanctions clause of the draft law that this Court ought to grant the writ of certiorari in order to determine the question.

VI.

The holding of the court below is out of harmony with *Jencks* v. *United States*, 353 U. S. 657 (1957), when it approved the ruling of the trial court excluding the FBI report from evidence, which was offered for the purpose of determining whether or not the Department of Justice denied the petitioner a full and fair hearing by withholding favorable evidence from the appeal board.

The holding of the court of appeals that *United States* v. *Nugent*, 346 U. S. 1 (1953), precludes the compulsory production of the FBI report at the trial even when it is sought to establish a denial of procedural due process before the appeal board by the Department of Justice in withholding from the appeal board favorable evidence developed by the FBI inquiry appears at pages 40 to 43, *infra*, Appendix A.

At the trial the petitioner contended that the Department of Justice had not forwarded to the appeal board in the

résumé all the favorable evidence that had been turned up by the FBI inquiry. Compare the résumé with the contention that it was inadequate. [R. 110-121; see also 52-56]

Upon the trial it appeared that the hearing officer had the original FBI report before him and that the original of it was sent to the Department of Justice in Washington along with the recommendation of the hearing officer and his report of the hearing. [R. 50, 126] The proof showed that the résumé supplied to the petitioner was only one-fourth the size of the original FBI report. [R. 50-51] The trial court on two occasions sustained the objection of the Government and ruled that the FBI report was not material or relevant. [R. 52-56, 80-82]

At the trial when the FBI report was offered and upon the appeal the petitioner contended that the FBI report was relevant to show that he had been denied procedural due process of law before the appeal board because the Department of Justice did not provide the petitioner and the appeal board with summaries of all the favorable evidence appearing in the FBI report so as to overcome the adverse recommendation made to the appeal board and also to show that there was no basis in fact for denying the full conscientious objector claim. This was a fact issue in the district court. The question was whether the petitioner was wrongly denied the right to make proof when the ruling was made refusing to compel the production of the FBI report for the purpose of comparison of it with the summaries provided by the Department of Justice to the petitioner and to the appeal board.

The trial court, without ever seeing the FBI report and relying alone upon a reading of the summary arbitrarily held—after denying the petitioner the right to prove to the contrary—that the summary was adequate. This Court has prohibited any speculation in determining whether the draft boards and the Department of Justice have complied with the procedural due process requirements.—*Simmons* v. *United States*, 348 U. S. 397, 404-406 (1955); *Gonzales* v.

United States, 348 U. S. 407, 414-417 (1955); compare *Steele* v. *United States,* 240 F. 2d 142 (1st Cir. 1956).

The court below approved the ruling of the trial court, excluding the FBI report and held that the petitioner was not entitled to prove that he was denied procedural due process of law through the failure of the Department of Justice to make a full and fair summary of the favorable evidence in each case. This ruling of the court below is in conflict with *United States* v. *Andolschek,* 142 F. 2d 503, 506 (2d Cir. 1944); *United States* v. *Krulewitch,* 145 F. 2d 76 (2d Cir. 1944); and *United States* v. *Beekman,* 155 F. 2d 580 (2d Cir. 1946).

It may be argued by the Government that this Court must rely upon the presumption of regularity in administrative proceedings. Notwithstanding *Koch* v. *United States,* 150 F. 2d 762, 763 (4th Cir. 1945), and *United States* v. *Fratrick,* 140 F. 2d 5, 7 (7th Cir. 1944), to the contrary, petitioner says that the presumption of innocence in criminal proceedings makes inapplicable such presumption of regularity.

In *Jones on Evidence in Civil Cases,* Fourth Edition, Bancroft-Whitney Co., San Francisco, 1938, Volume 1, § 101, it is said: "Generally speaking, no legal presumption is so highly favored as that of innocence; ordinarily substantially all other presumptions yield to it in case of conflict." There the author cites *Dunlop* v. *United States,* 165 U. S. 486 (1897), and *Edwards* v. *United States,* 7 F. 2d 357. It is later stated in this section, fourth paragraph, that the presumption of innocence prevails over a large number of other presumptions. It is submitted, therefore, that it cannot be said, as did the trial court in this case, that the Department of Justice is presumed to have made full and complete summaries of all the favorable evidence.

This ruling of the court below, denying petitioner the right to show a violation of procedural due process by the Department of Justice in withholding evidence from the appeal board, is out of harmony with *Jencks* v. *United*

States, 353 U. S. 657, 761, (1957). There a statement given to the FBI by a witness against the defendant was held to be relevant to test the accuracy of his testimony. Here the summary of the FBI report was a "witness" against the petitioner in the appeal board. In the trial court, as a basis for acquittal, the petitioner contended that vital and important evidence favorable to his conscientious objector claim was omitted in the summary sent to the appeal board, thus denying procedural due process of law. This was not fair and just. Section 1 (c) of the Act (50 U. S. App. § 451 (c); see *supra,* page 5) provides for "a system of selection which is fair and just."

Petitioner to prove such denial of due process was entitled to test such summary, as a "witness" against him on his conscientious objector claim. He is allowed by due process of law in the district court to see whether such "witness" omitted important and material evidence supporting his conscientious objector claim that should have been given to the appeal board and exculpating him from the adverse recommendation made by the Department of Justice to the appeal board. It may very well be that a comparison of the FBI report with the summary made of it to the appeal board will show a vital omission. But assume it will not. In any event the petitioner was entitled by procedural due process of law in the district court to attempt to prove the denial of due process by the Department of Justice in the draft board proceedings. Yet he was denied this right in the district court to call his "witnesses" (the FBI report), by the ruling of the trial court.

It must be conceded that, in the trial of all conscientious objector cases under the Act, there is an issue of procedural due process in Department of Justice proceedings. It is to determine whether the Department of Justice has broken the link in the procedural chain by denying procedural due process of law. This was so held in *Gonzales* v. *United States,* 348 U. S. 407 (1955); *Simmons* v. *United States,* 348 U. S. 397 (1955); and *Sicurella* v. *United States,* 348

U. S. 385 (1955). There is still another way by which the Department may deny procedural due process of law. It is by concealing or holding back from the consideration of the appeal board favorable evidence supporting petitioner's conscientious objector claim. This is through making an incomplete or inaccurate summary of the original FBI reports, suggested in *United States* v. *Nugent*, 346 U. S. 1 (1953).

Since this is an issue for the district court trying the conscientious objector cases to decide, the question inevitably arises: How can the trial court determine whether the Department of Justice withheld evidence by making an incomplete summary? The question answers itself: By a mere comparison of the documents with the summaries thereof.

Even the court in *Blalock* v. *United States*, 247 F. 2d 615 (4th Cir. 1957), admitted this by a statement made in its opinion. The court said: "Moreover, it is undeniably true that one cannot easily judge the fairness and completeness of a resume without looking at the documents it purports to summarize." See 247 F. 2d at page 620. The issue can be very well likened to that of a trial where a book review is the subject of inquiry. How can the court determine whether the book review is full and fair without reading the book? The judicial function could not be completed unless and until the book was produced. So it is here. The court cannot say whether a fair summary of the favorable evidence was given until the FBI report, which was summarized, is produced for comparison.

A question similar to that presented here was submitted to this Court in *Simmons* v. *United States*, 348 U. S. 397 (1955). Read what this Court said in the last paragraph of that opinion. (348 U. S. at page 406) It was presented to this Court in other cases. See footnote 3 of the opinion in *Blalock* v. *United States*, 247 F. 2d at page 621. The denial of certiorari in those cases is insignificant.—*United States* v. *Carver*, 260 U. S. 482, 490 (1923); compare special concur-

ring opinion of Mr. Justice Frankfurter in *Maryland* v. *Baltimore Radio Show,* 338 U. S. 912 (1950).

In *Simmons* v. *United States,* No. 251, October Term, 1954 at page 17 of the Memorandum of the United States in Opposition, Judge Sobeloff (author of the opinion in *Blalock* v. *United States,* 247 F. 2d 615 (4th Cir. 1957)) (then Solicitor General) told this Court: "However, if the Court does not deem this issue determined by *Nugent,* we would not oppose the grant of certiorari on this point, in view of the series of contrary district court rulings which the government has been unable to appeal since refusal to disclose has resulted in judgments of acquittal."[1] Since the date of the decision in *Jencks* v. *United States,* 353 U. S. 657 (1957), the United States District Court for the Western District of Washington in *United States* v. *Jacobson,* 154 F. Supp. 103 (W. D. Wash. 1957), decided the identical issue present here in conflict with the decision of the court below. This continuing conflict between the district courts in many parts of the country with the decisions of the courts of appeals is still of sufficient importance to justify the granting of the writ in these cases.

Generally the same cases cited by the court in *Blalock* v. *United States,* 247 F. 2d 615 (4th Cir. 1957), in footnote 3 of the opinion may be distinguished. This is because they involved an attempt to subpoena the FBI report for the purpose of showing that adverse evidence against the registrant was withheld at the hearing in the Department of Justice. The reason they are distinguishable is that here the FBI report is needed to determine whether favorable evidence has been withheld from the appeal board. In the cases referred to involving the withholding of unfavorable evidence at a hearing, it may be said the situation is dif-

[1] See the district court opinions: *United States* v. *Edmiston,* 118 F. Supp. 238, 240 (D. Neb. 1954); *United States* v. *Evans,* 115 F. Supp. 340, 343 (D. Conn. 1953); *United States* v. *Stull,* No. 5634, Eastern District of Virginia, Richmond Div., Nov. 6, 1953; *United States* v. *Stasevic,* 117 F. Supp. 371 (S. D. N. Y. 1953); *United States* v. *Parker,* No. 3651, District of Montana, Butte Div., Dec. 2, 1953; *United States* v. *Brussell,* No. 3650, District of Montana, Butte Div., Nov. 30, 1953.

ferent from the case here where favorable evidence is held back.[2] It may also be said, but not admitted, that the registrant is not unduly harmed in the administrative proceedings by withholding unfavorable evidence at the Department of Justice hearing. The reason may be that the written summary of the unfavorable evidence is all that reaches the appeal board and the registrant has the right to answer that before the appeal board. (*Gonzales* v. *United States,* 348 U. S. 407 (1955)) He has no way, however, of overcoming the prejudice done by holding back and not making known to him and to the appeal board of the favorable evidence.

Petitioner suggests that it may be that the reason the petition for writ of certiorari was denied in *White* v. *United States,* 348 U. S. 970 (1955), after the statement made in the last paragraph of the opinion in *Simmons* v. *United States,* 348 U. S. 397, 406 (1955), was that the procedure established that day in *Gonzales* v. *United States,* 348 U. S. 407 (1955), would thereafter prevent the question from again arising or would be a sufficient guarantee against the denial of due process in cases involving unfavorable evidence not given to the registrant at the Department of Justice hearing.

The denial of certiorari in *White* v. *United States,* 215 F. 2d 782 (9th Cir. 1954), cert. denied, 348 U. S. 970 (1955), may have been based on the proposition that the résumé of the adverse evidence spoke for itself and there was no need to look at the FBI report to determine whether the registrant was harmed because he had the opportunity to answer the only adverse evidence before the Department of Justice that was used before the appeal board. Compare *United States* v. *Nugent,* 346 U. S. 1 (1953), with *Gonzales* v. *United States,* 348 U. S. 407 (1955). The question decided in *White* v. *United States,* 215 F. 2d 782 (9th Cir. 1954), cert. denied 348 U. S. 970 (1955), was presented to this

[2] Petitioner does not admit that the holdings by the courts of appeals cited in footnote 3 of the *Blalock* opinion are correct.

Court but not decided in *Simmons* v. *United States,* 348 U. S. 397, 406 (1955).

An entirely different question arises when, as here, the federal courts are called upon to determine whether all the *favorable* evidence has been presented by the Department of Justice to the registrant and to the appeal board. On such an issue the harm or prejudice done to the registrant by the Department of Justice is not an act of commission that the registrant can answer but is an act of omission that the registrant has no way of protecting himself against. Where adverse evidence is used in the Department of Justice or before the appeal board, the rights of the registrant may be said to be adequately protected by the right to answer the unfavorable evidence made known to the registrant. Since his right in respect to the adverse evidence is protected by the right to reply to it before the appeal board, there is no need to subpoena the FBI report to determine if all the unfavorable evidence has been divulged, although petitioner does not concede this since the question is still open in this Court. See *Simmons* v. *United States,* 348 U. S. 397 (1955), and *Gonzales* v. *United States,* 348 U. S. 407 (1955). But in the case of withholding favorable evidence the situation is just the reverse of that involving adverse evidence used before the appeal board. This vast difference makes entirely inapplicable the arguments and reasons relied upon by the Government and by the courts of appeals for not producing the FBI reports at the trials where the only question involved is the use of unfavorable evidence. —*Campbell* v. *United States,* 221 F. 2d 454 (4th Cir. 1955); *Simmons* v. *United States,* 213 F. 2d 901 (7th Cir. 1954) (reversed on other grounds, 348 U. S. 397 (1955)).

The court below grounded its decision in this case upon *United States* v. *Nugent,* 346 U. S. 1 (1953). That decision gives no support for the holding in this case. *Nugent* involved only the question of whether all the adverse evidence in the FBI report should be given to the registrant during the administrative proceedings by sub-

mitting the original report to him. The Court held that giving a summary of the adverse evidence was sufficient. The question of whether the defendants in that case had the right to subpoena the FBI report at the trial was not determined, although it was raised in the brief filed in this Court.

Petitioner is making a complaint under another point in this petition that the original FBI report was not given to him in the administrative proceedings. He says under this point that the summary of the report was inadequate and thus favorable evidence was withheld from the appeal board denying procedural due process and that the FBI report is material to determine that point. The *Nugent* case (346 U. S. 1) did not decide whether the FBI reports could be subpoenaed in the trial court for the purpose of testing the résumés made to the appeal board. No such résumé was even made in the *Nugent* case. That question was also undecided in that case, the same as it was in *Simmons* v. *United States*, 348 U. S. 397, 406 (1955).

Since the question was not decided by this Court in *Nugent* (346 U. S. 1 (1953)), then how can the Court of Appeals amend the decision of this Court in *Nugent* (346 U. S. 1 (1953)) by saying that it was decided? The very fact that the decision of the court below is based upon a nonexistent holding by this Court in *United States* v. *Nugent*, 346 U. S. 1 (1953), is itself a sufficient reason for granting the writ of certiorari in this case. Consider also the last two paragraphs of the opinion of the court in the *Blalock* case (247 F. 2d 615, 621), where the court indicates its extreme uncertainty about its holding.

It is submitted that the writ should be granted because (1) the decision of the court below is in direct conflict with *United States* v. *Beekman*, 155 F. 2d 580 (2d Cir. 1946); *United States* v. *Krulewitch*, 145 F. 2d 76 (2d Cir. 1944); and *United States* v. *Andolschek*, 142 F. 2d 503, 506 (2d Cir. 1944), and (2) the decision below also is out of accord with *Jencks* v. *United States*, 353 U. S. 657 (1957). See also the Act of Congress printed as Appendix D at pages 51 to 53,

infra. In the event that this Court does not so find, then it is submitted that, for the reasons above stated, the question is of such wide public and general national importance in the administration of the criminal sanctions clause of the federal draft law as to warrant a granting of the writ.

CONCLUSION

WHEREFORE, for the reasons above stated, the petition for writ of certiorari should be granted.

Respectfully submitted,

HAYDEN C. COVINGTON
124 Columbia Heights
Brooklyn 1, New York
Counsel for Petitioner

February, 1958

APPENDIX A

Opinion

(January 29, 1958)

Hayden C. Covington for Appellant.

Philip R. Douglas, Assistant United States Attorney, (Paul W. Cress, United States Attorney, was with him on the brief) for Appellee.

Before BRATTON, Chief Judge, PICKETT and LEWIS, Circuit Judges.

LEWIS, Circuit Judge.

Bouziden stands convicted of refusing to submit to induction into the armed forces. 50 U.S.C.A. 462. He seeks relief from the judgment and sentence urging that the trial court twice refused, prejudicially, to properly apply the rule and philosophy announced in Jencks v. United States[1] and further erred in failing to recognize the denial of procedural due process in the administrative channels leading to his classification as 1-A. The contentions are interlaced in law and fact.

Bouziden is a member of Jehovah's Witnesses. Asserting subjective sincerity in his belief in the teachings of that religion, appellant filed a draft classification questionnaire on March 4, 1952, claiming exemption from conformable military service. The local draft board refused him classification as a minister of religion (IV-D)[2] and similarly rejected his claim to a 1-O classification, that of a conscientious objector. Bouziden appealed his 1-A status and his file was referred to the Department of Justice for investigation and recommendation in accordance with 50 U.S.C.A. 456 (j). That Department recommended to the appeal board that Bouziden be denied classification as a conscientious objector, noting in its report that the applicant believed in theocratic

[1] 353 U. S. 657, 77 S. Ct. 1007, 1 L. Ed. 2d 1103.

[2] This action is not now questioned.

warfare and was willing to fight in self defense.[3] The appeal board classified him 1-A and he refused to submit to induction on May 25, 1953. Prosecution was begun but dismissed and appellant's file was referred to and reopened at the local board level.

On May 4, 1955, the local board again classified appellant 1-A, and upon his appeal, his file was again forwarded to the Department of Justice. The Federal Bureau of Investigation made inquiry and observation of Bouziden's background and associates and submitted a report to the departmental hearing officer and a résumé to appellant. Appellant requested that the hearing officer send a copy of the full F.B.I. report to the appeal board and another copy to him. This was not done.

Appellant considered the F.B.I. résumé to be unfair and wrote the hearing officer to that effect. Particular complaint was made of statements questioning the moral conduct of certain of appellant's acquaintances and relatives, activities of which appellant asserted he had no knowledge. The résumé contained statements of witnesses favorable to appellant as well as those who thought him not sincere in his religious beliefs. Sincerity of belief is the essence of the inquiry made by the Department of Justice. Bradshaw v. United States (10 Cir.) 242 F. 2d 180.

On September 22, 1955, a hearing was held during which both appellant's wife and the hearing officer took notes of the occurrence. The hearing officer reported unfavorably upon appellant's sincerity claim, the Department of Justice recommended against his request to be classified as a conscientious objector, the appeal board classified him as 1-A, and the local board ordered him to report for induction on July 24, 1956. He refused to submit to induction and this prosecution followed.

Trial was had to the court sitting without a jury. Appel-

[3] Such beliefs are not grounds for a denial of a 1-O classification. Sicurella v. United States, 348 U. S. 385, 75 S. Ct. 403, 99 L. Ed. 436; Annett v. United States (10 Cir.) 205 F. 2d 689.

lant again sought production of the entire F.B.I. report and his demand was again refused. He asserts this to be error compounded, claiming the right to the report both in the instant case and during the course of the precedent administrative proceedings.

Against this assertion that the Fifth Amendment grants the applicant the right to inspect the investigator's reports, it was held in United States v. Nugent, 346 U. S. 1, 73 S. Ct. 991, 97 L. Ed. 1417, that the Justice Department satisfies its statutory and constitutional duties when it supplies a registrant with a résumé of any adverse evidence and permits him to produce all relevant evidence in his own behalf before an impartial hearing officer. The hearing outlined by the statute is not an all-out trial wherein the registrant may collaterally attack the testimony obtained in the prehearing investigation.

Since the Nugent case was not expressly overruled by Jencks v. United States, supra, appellant seeks first to distinguish his case from the Nugent case and bring it within the rule of the Jencks case and second to show that the Nugent case was indirectly overruled by the Jencks decision.

Appellant sought the production of the complete investigative reports in the trial of his criminal prosecution for failing to submit to induction after having been so ordered by his local board. Therefore, he avers that the question is not whether the hearing was conducted by the appeal board in accordance with the standards of due process, as in Nugent, but rather goes to his right to those records in defense of a criminal action in an attempt to show that the order of the board was baseless in fact and hence unlawful. This theory has twice been tested in the federal system since the Jencks decision, the two courts arriving at opposite conclusions in United States v. Jacobson (D.C. W.D. Wash.) 154 F. Supp. 103 and Blalock v. United States (4th Cir.) 247 F. 2d 615.

In the Jacobson case, the District Court emphasized the fact that although only the resume was submitted to the

appeal board and that board made its final determination without considering the full F.B.I. reports, the two recommendations from the Justice Department were probably highly influential and had been made by men who had studied the full reports. It was that court's opinion that the Jencks case required that the F.B.I. reports in their original form be produced for the defendant's inspection or that the prosecution be dismissed.

The court further recognized that the inevitable result under this view would be to entitle the registrant to the files in a criminal prosecution which were closed to him before the administrative bodies, thus nullifying the clear distinction drawn between the original reports and the résumé in Nugent, but dismissed this argument as not being in accord with the philosophy of Jencks.

On the other hand, the Fourth Circuit adhered to the view of the Nugent case in Blalock stating:

> "The history of the treatment of F.B.I. reports, both in Nugent and in other cases, however, indicates the sharp distinction between applications by defendants in ordinary criminal cases to examine statements made to the F.B.I. by witnesses called to the stand by the Government, and demands for the production of such reports in conscientious objector cases. It is arguable that the résumé furnished the accused in a Selective Service case is like a witness; that the résumé should be subject to testing for fairness and completeness by a process similar to that applied to a witness whose testimony may be impeached by showing prior conflicting statements. Moreover, it is undeniably true that one cannot easily judge the fairness and completeness of a résumé without looking at the documents it purports to summarize . . . However plausible these contentions, we cannot accept them, for the point was considered and rejected in Nugent."

And further that:

> "Whatever may be the boundaries and limitations of the Jencks doctrine, we think it clear that it is subject to the qualification of the Nugent case for the type of problem here involved, that is, testing the accuracy of the résumé furnished in conscientious objector cases, in contrast to impeachment of witnesses in criminal cases. The Nugent case explicitly holds that if the defendant was furnished a résumé and accorded an opportunity to be heard, he cannot complain that he was not shown the investigative records, nor can he insist on their production at the criminal trial."

Appellant was informed of all adverse information and conclusions destined for consideration by the board of appeal; he was granted a hearing and permitted to enter rebutting evidence for the board's consideration. He does not contend that under the Nugent doctrine he has a right to collaterally attack or impeach the informants; he desires to examine the original reports in order to determine whether or not the board received a fair and full report of all favorable information received by the F.B.I.

In thus claiming his right to the reports, appellant neglects the consideration that the burden is his in all stages of the classification proceedings to show that he is entitled to the grace of statutory exemption. Bradshaw v. United States, supra. The Department of Justice is under the duty of investigating, informing him of evidence against him, and holding a hearing to permit him to explain, rebut or overwhelm such evidence. The Department does not hold a position of advocacy either to maintain or defeat his classification claim; it merely acts as a preliminary hearing body with powers of independent investigation for the purpose of advising the appeal board. In this the F.B.I. reports perform an entirely different function than when they are made with the objective of prosecution. In the Jencks case, the government must make an election as to whether to permit

access to the secret files which it intends to use in prosecution, base its case on other evidence, or, if it has no other evidence, dismiss the action. Such is not the present situation. Without the special dispensation allowed the conscientious objector, his classification would follow that of other young men in his situation. The procedures to test his sincerity are a part of the statute and his classification is subject to them.

The fact that the Justice Department's recommendation forms a part of the record and the complete file is not before the board of appeals does not make the board's action unlawful (since this is the determinative procedure set by statute) if there is a basis in fact to be found in the whole record. The record does not change complexion because the applicant chose to disregard a lawful order of the board and thus subject himself to criminal prosecution. The exploration of the sincerity of the applicant's belief is made the duty of the local board, the appeal board and the Department of Justice and the court may not substitute its judgment of this subjective fact where the determination has some basis in objective fact. Estep v. United States, 327 U. S. 114, 66 S. Ct. 423, 90 L. Ed. 567.

We hold that appellant was neither entitled to the full F.B.I. reports during his classification proceedings, United States v. Nugent, supra, nor during his trial, United States v. Blalock, supra.

Among the witnesses called by the government in aid of prosecution was the Department of Justice hearing officer before whom Bouziden had appeared. The witness testified as to events which transpired at the hearing, his testimony conflicting in part with that of Mrs. Bouziden upon the same subject. On cross examination, the government's witness stated that at the time of the hearing he had made notes in longhand (as had Mrs. Bouziden) and that he had the notes with him on the witness stand. Appellant requested the court to require the witness to produce the notes for examination for possible impeachment. The request was denied.

Relying again upon Jencks, supra, appellant cites this ruling as error requiring reversal.

At the outset it may be noted that the factual background of Jencks may be clearly distinguished from that herein considered. In Jencks the reports sought were made during the investigation of the crime charged and with the view of prosecution. Here, the notes were made by an impartial hearing officer performing a function of statutory nature. In Jencks, the reports were official in nature and communicated as such. Here, the notes were but a personal aid to one performing a quasi-judicial function and totally uncommunicated. In Jencks, the reports were in the official possession of the prosecution. Here, the notes were in the possession of a witness over whom the government may well have no control.

But more important is our opinion that the rationale of Jencks is neither intended to reach the instant case nor should it be so extended. Under the rule of the Jencks case the government must make its choice to prosecute or refrain, to produce or refuse, to punish or release in accordance with its judgment as to how the public good will be best served. And under the facts of Jencks the government has control and knowledge of the factors upon which its decision as to the public good must rest. In the instant case the prosecution had neither knowledge of nor control of the hearing officer's notes. We do not interpret Jencks as applying to personal writings of government witnesses. The refusal of the trial court to direct the hearing officer to surrender his notes, in the absence of a showing of value for impeachment or that the witness was testifying or had refreshed his memory from the notes, was well within the trial court's wide discretion under the general rules of evidence.

Appellant's remaining assignments of error attack the F.B.I. résumé and the Department of Justice report as containing "unfair representations and illegal grounds for the denial of the conscientious objector claim" and also as making "serious omissions of facts favorable to the appellant"

all of which led the action of the appeal board to be without basis in fact. The scope of our review in this regard is extremely limited.

"It is well to remember that it is not for the courts to sit as super draft boards, substituting their judgments on the weight of the evidence for those of designated agencies. Nor should they look for substantial evidence to support such determination." Dickinson v. United States, 346 U. S. 389, 74 S. Ct. 152, 98 L. Ed. 132.

To determine whether or not a person is sincere in a particular religious belief is a most difficult task which can never be the subject of complete satisfaction. And to judge a person's religious sincerity by the acts and conduct of relatives and other persons may be extremely unfair. Truly a man may be a pillar of religious devotion and have a brother who is a reprobate. But the exploration of subjective sincerity is imperspicuous by definition and we cannot say that prolonged and intimate association with the immoral does not probe the subject. It may. As to whether it does in a particular case of this nature we leave to others as the rule requires. Similarly we note that the hypocrite may attend formal religious services without fail and the pure in heart may not; the liar may be direct in his answers and the personality of a truthful man may give a false impression of evasiveness. But the converse may be true and perhaps more often is. During the administrative process this appellant was designated as being evasive in answer, associating with persons of poor moral character and serving his church with irregularity. We conclude that the action of the draft board is not, as a matter of law, without any basis in fact.

The recommendation of the Department of Justice contained the statement that applicant was not opposed to theocratic wars or self defense. The type of reasoning which leads to the conclusion that an applicant cannot be conscientiously opposed to warfare if he holds such beliefs has been denominated an error of law which vitiates the entire proceedings. Sicurella v. United States, supra. Such a belief

cannot be considered as nullifying a conscientious objection to warfare nor as forming the basis for rejection of the application, Annett v. United States, supra. However, the statement of the applicant's beliefs contained in the body of the report is clearly relevant for consideration and the hearing officer's recommendation does not rely on the erroneous standard of Bouziden's willingness to fight in theocratic warfare but rests on the total view of the applicant's sincerity.

Finally, appellant asserts that the first report of the F.B.I. and the recommendation of the Department did utilize this improper standard and was never formally retracted, so tainting the present proceedings as to void them. Since the original prosecution was dismissed and appellant's draft status considered de novo, we are in simple accord with the trial judge's statement that there is no reason to believe that appellant's ultimate classification was influenced improperly.

The judgment is affirmed.

APPENDIX B

Judgment

Seventeenth Day, January Term, Wednesday, January 29th, 1958.

Before Honorable Sam G. Bratton, Chief Judge, and Honorable John C. Pickett and Honorable David T. Lewis, Circuit Judges.

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Oklahoma and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment and sentence of the said district court in this cause be and the same is hereby affirmed.

It is further ordered by this court that Jimmy James Bouziden, appellant, surrender himself to the custody of the United States Marshal for the Western District of Oklahoma, in execution of the judgment and sentence imposed upon him, within ten days from and after the date of the filing of the mandate of this court in said district court.

APPENDIX C

Section 1622.11 of the Regulations (32 C. F. R. § 1622.11; E. O. 10292, 16 F. R. 9862, Sept. 28, 1951) reads as follows:

§ 1622.11 *Class I-A-O: Conscientious objector available for noncombatant military service only.* (a) In Class I-A-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to combatant training and service in the armed forces.

(b) Section 6 (j) of title I of the Universal Military Training and Service Act, as amended, provides in part as follows:

Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.

Section 1622.14 of the Regulations (32 C. F. R. § 1622.14; E. O. 10420, 17 F. R. 11593, Dec. 19, 1952) reads as follows:

§ 1622.14 *Class I-O: Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest.* (a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces.

(b) Section 6 (j) of title I of the Universal Military Training and Service Act, as amended, provides in part as follows:

Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociologi-

cal, or philosophical views or a merely personal moral code.

(Section 1622.14 (b) contained in E. O. 10292, 16 F. R. 9862, Sept. 28, 1951.)

Sections 1626.25 (a), 1626.25 (b) and 1626.25 (c) of the Regulations (32 C. F. R. §§ 1626.25 (a), 1626.25 (b) and 1626.25 (c); E. O. 10363, 17 F. R. 5456, June 18, 1952) read as follows:

§ 1626.25 *Special provisions when appeal involves claim that registrant is a conscientious objector.* (a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall take the following action:

(1) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to participation in combatant training and service in the armed forces, but not conscientiously opposed to participation in noncombatant training and service in the armed forces, and the local board has classified the registrant in Class I-A-O, the appeal board shall proceed with the classification of the registrant. If, in such a case, the local board has classified the registrant in any class other than Class I-A-O, the appeal board shall transmit the entire file to the United States Attorney for the Federal judicial district in which the appeal board has jurisdiction for the purpose of securing an advisory recommendation from the Department of Justice.

(2) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces, and the local board has classified the registrant in Class I-O, the appeal board shall proceed with the classification of the registrant. If, in such a case, the local board has classified the registrant in any class other than Class I-O, the appeal

board shall transmit the entire file to the United States Attorney for the Federal judicial district in which the appeal board has jurisdiction for the purpose of securing an advisory recommendation from the Department of Justice.

(b) Whenever a registrant's file is forwarded to the United States Attorney in accordance with paragraph (a) of this section, the Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

(c) Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice. The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant the letter containing the recommendation of the Department of Justice.

APPENDIX D

Criminal Code Amendation
Public Law 85-269
85th Congress, S. 2377
September 2, 1957

AN ACT

To amend chapter 223, title 18, United States Code, to provide for the production of statements and reports of witnesses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 223 of title 18, United States Code, is amended by adding a new section 3500 which shall read as follows:

"§ 3500. Demands for production of statements and reports of witnesses

"(a) In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) to an agent of the Government shall be subject of subpoena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.

"(b) After a witness called by the United States has testified on direct examination, the Court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

"(c) If the United States claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the United States to deliver such statement for the inspection of the court in camera. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the court shall then direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this section, the court in its discretion, upon application of said defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant and his preparation for its use in the trial.

"(d) If the United States elects not to comply with an order of the court under paragraph (b) or (c) hereof to deliver to the defendant any such statement, or such portion thereof as the court may direct, the court shall strike from the record the testimony of the witness, and the trial shall proceed unless the court in its discretion shall determine that the interests of justice require that a mistrial be declared.

"(e) The term 'statement', as used in subsections (b), (c), and (d) of this section in relation to any witness called by the United States, means—

"(1) a written statement made by said witness and signed or otherwise adopted or approved by him; or

"(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to an agent of the Government and recorded contemporaneously with the making of such oral statement."

The analysis of such chapter is amended by adding at the end thereof the following:

"3500. Demands for production of statements and reports of witnesses."

Approved September 2, 1957.

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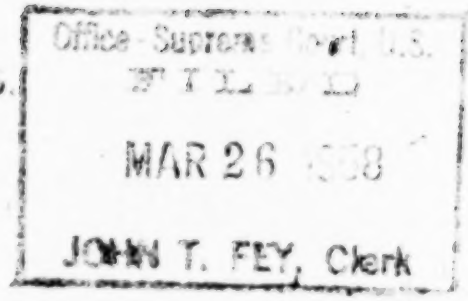

No. 804

In the Supreme Court of the United States

OCTOBER TERM, 1957

JIMMY JAMES BOUZIDEN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
MALCOLM ANDERSON,
Assistant Attorney General,
BEATRICE ROSENBERG,
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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 38–46) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on January 29, 1958 (Pet. 47). The petition for a writ of certiorari was filed on February 24, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether there was a basis in fact for petitioner's I-A (available for military service) draft classifica-

tion and for denial of his claim to conscientious objector status.

2. Whether the Department of Justice recommendation to the appeal board (on review of the local board's classification action now under attack) erroneously recommended denial of petitioner's conscientious objector claim upon the basis of his belief in theocratic warfare.

3. Whether petitioner was entitled to production of the full F. B. I. investigative report at the administrative hearing on his conscientious objector claim.

4. Whether the full F. B. I. report should have been produced at the trial.

5. Whether the court erred in excluding from evidence the longhand notes of the hearing officer and his report to the Department of Justice.

STATUTES AND REGULATIONS INVOLVED

Universal Military Training and Service Act (62 Stat. 604, 612, 622; 65 Stat. 75, 86):

Section 6 (j) [50 U. S. C. App. 456 (j)]:

> Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving dutes superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemp-

tion from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * *. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such

noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * *. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. * * *

Section 12 (a) [50 U. S. C. App. 462 (a)]:

Any * * * person * * * who * * * refuses * * * service in the armed forces * * * or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title * * * shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *. * * *

Regulations of the Selective Service System:

32 C. F. R. 1626.25, as amended by E. O. 10659, 21 F. R. 1079, 1083, 1103, Feb. 17, 1956:

§ 1626.25 *Special provisions when appeal involves claim that registrant is a conscientious*

objector. (a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall transmit the entire file to the United States Attorney for the Federal judicial district in which the appeal board has jurisdiction for the purpose of securing an advisory recommendation from the Department of Justice.

(1) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to participation in combatant training and service in the armed forces, but not conscientiously opposed to participation in noncombatant training and service in the armed forces, and the local board has classified the registrant in Class I–A–O, the appeal board shall proceed with the classification of the registrant. If, in such a case, the local board has classified the registrant in any class other than Class I–A–O, the appeal board shall transmit the entire file to the United States Attorney for the Federal judicial district in which the appeal board has jurisdiction for the purpose of securing an advisory recommendation from the Department of Justice.

(2) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces, and the local board has classified the registrant in Class I–O, the ap-

peal board shall proceed with the classification of the registrant. If, in such a case, the local board has classified the registrant in any class other than Class I–O, the appeal board shall transmit the entire file to the United States Attorney for the Federal judicial district in which the appeal board has jurisdiction for the purpose of securing an advisory recommendation from the Department of Justice.

(b) Whenever a registrant's file is forwarded to the United States Attorney in accordance with paragraph (a) of this section, the Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

(c) Upon receipt of the recommendation of the Department of Justice, the appeal board

shall mail a copy thereof to the registrant together with a letter advising the registrant that, within 30 days after the date of such mailing, he may file with the appeal board a written reply concerning the recommendation of the Department of Justice. Upon receipt of the reply of the registrant or the expiration of the period afforded him to make such reply, whichever occurs first, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice. The appeal board also shall give consideration to any reply to such recommendation received from the registrant. The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant the recommendation of the Department of Justice, a copy of its letter transmitting a copy of such recommendation to the registrant, and any reply to such recommendation received from the registrant.

STATEMENT

In April 1957, at a trial before the court (jury having been waived), petitioner was convicted in the United States District Court for the Western District of Oklahoma for refusal to obey an order for induction into the armed forces of the United States in violation of 50 U. S. C. App. 462. He was sentenced to two years' imprisonment (R. 4–5, 10, 11, 12, 87). On appeal (R. 10–11), the judgment was unanimously affirmed (Pet. 47).

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1. At the trial, petitioner's selective service file was introduced in evidence as Government Exhibit 1 (R. 13). The background evidence may be summarized as follows:

In his classification questionnaire, received by his local board on March 4, 1952, petitioner stated that he was born on February 21, 1933; that he had been a minister of the Jehovah's Witnesses since July 1942; and that he was conscientiously opposed to participation in war in any form (R. 88–90). In his Form 150 (Special Form for Conscientious Objector), petitioner stated, "My belief in a supreme Being does not involve duties in Military affairs. My commission and ordination as a Minister comes from God" (R. 97). Petitioner was classified I-A (available for military service) by the local board on April 2 and again on April 16, 1952 (R. 90, 91). Upon appeal, his file was forwarded to the United States Attorney for an advisory recommendation by the Department of Justice as to the conscientious objector claim (R. 91). The hearing officer was given an F. B. I. résumé dated July 16, 1952, as to petitioner's claim (R. 110–113). On December 4, 1952, the Special Assistant to the Attorney General recommended that petitioner's objections to combatant and non-combatant service should not be sustained, at least in part on the ground that petitioner believed in theocratic warfare and was willing to fight in self-defense[1] (R. 97–99). On December 17, 1952, the appeal board classified peti-

[1] The later case of *Sicurella* v. *United States*, 348 U. S. 385, held that such beliefs were not grounds for denial of a I–O classification.

tioner I-A (R. 91). Prosecution, by reason of petitioner's refusal to be inducted, was started but was later dismissed, and petitioner's file was ordered reopened (R. 91–92, 99–100).

On May 4, 1955, the local board again classified petitioner I–A (R. 92, 104). In a letter of May 9, 1955, from petitioner to the local board, he expanded on his reasons for classification as a minister or as a conscientious objector (R. 101–103). On June 1, 1955, petitioner took an appeal from his I–A classification (R. 93, 103). In a letter of June 2, 1955, from the local board to the appeal board, it was stated that petitioner's claim for classification as a minister was denied. The local board did not consider him a "regular" minister, since he stated he worked only 3 or 4 hours per week as a minister and 40 hours as a painter earning $2 per hour (R. 104–105). The file was then forwarded to the appeal board, and later to the Department of Justice for investigation of the conscientious objector claim (R. 93, 105–107).

A résumé of the F. B. I. inquiry dated September 22, 1955 (R. 113–121), contained some favorable comments by observers that petitioner's actions were "very good" (R. 114); that he was "sincere" in his conscientious objector claim and in his religious beliefs (R. 115, 117, 118, 121); and that he was a person of "excellent character" and reputation (R. 116, 117, 118). This résumé also included some unfavorable comments that several warrants had been issued against petitioner for traffic violations in Wichita, Kansas; that after having been arrested in Pratt, Kansas, for running a stop sign, he was "very bellig-

erent" (R. 116); that his religious work for Jehovah's Witnesses was far below the average of other members of the congregation; that he was not sincere in his conscientious objector claim; that the local board at Alva, Oklahoma, had offered him a I–O (conscientious objector) classification to do hospital work, but he had refused this, in asking for a IV–D minister classification (R. 119); and that most persons interviewed at Alva believed that petitioner's "home environment, being raised by an uncle who was a convicted bootlegger, is inconsistent with his claim of being a conscientious objector, based upon his religious training and beliefs" (R. 120). On December 23, 1955, petitioner wrote to hearing officer Evenson, requesting production of the complete F. B. I. report so that he might compare it with the résumé to see whether the résumé was fair. He also asked that the report be forwarded to the appeal board to enable the board to consider the favorable as well as the unfavorable evidence (R. 121–122). Petitioner was not given the F. B. I. report as requested. In a letter of January 4, 1956, to hearing officer Evenson, petitioner pointed out that the résumés of July 16, 1952, and of September 22, 1955, were unfair as questioning the moral conduct of certain of his acquaintances and relatives for whom he was not responsible (R. 124–125).

Petitioner appeared before hearing officer Evenson in Pueblo, Colorado, on January 6, 1956, and was accompanied by his wife and brother. The recommendation of the Department of Justice to the appeal board reported that the hearing officer observed that

petitioner was evasive and seemed to lack knowledge of the Bible in general. Petitioner first denied drinking, but later admitted he had drunk intoxicating liquors and still drinks beer. He denied any arrests, but later admitted that several traffic warrants had been issued against him in Wichita, and that he had been arrested for running a stop sign in Pratt, Kansas. Petitioner did not seem able to answer the question as to how a person becomes a member of Jehovah's Witnesses until pressed upon specific points, after which he responded that he became a member through Bible study, attending meetings, and baptism in 1942 (R. 129). Petitioner stated that his allegiance was to the government of Jehovah, not to any man-made government, where a conflict existed; and that he would defend himself, his family, and brothers in the faith against foreign invaders (R. 129–130). Petitioner stated to the hearing officer that he was not against noncombatant service as such, but felt that he could not participate in it because it would interfere with his ministerial duties (R. 130). The hearing officer recommended that petitioner's appeal be denied. As stated in the report (R. 131):

> The Hearing Officer found that the general appearance and conduct of the registrant at the hearing failed to show sincerity and good faith. He concluded that the registrant is not opposed to participation in combatant or noncombatant military training and service by reason of his religious training and belief and he recommended that the appeal of the registrant be not sustained.

The Department of Justice recommended that petitioner's claim should not be sustained (R. 128–131). On March 13, 1956, the appeal board forwarded to petitioner a copy of the Department's recommendation, and informed him that under the regulations he would have 30 days to file a written reply (R. 133). On April 15, 1956, petitioner wrote the appeal board, "I hereby request that my letters and files be considered by the appeal Board at the next meeting" (R. 134). On June 21, 1956, the appeal board classified petitioner I–A by a 4-to-0 vote (R. 93). Petitioner was ordered to report for induction on July 24, 1956, but on the following day he refused induction (R. 93, 135–137). The prosecution followed.

2. At the trial, petitioner, his wife, and his brother all testified in contradiction of the hearing officer as to what occurred at the January 6, 1956, hearing. They testified that petitioner was not evasive and that no questions were asked about the Bible (R. 59, 36, 16–17); that he told the hearing officer that a person became a member of Jehovah's Witnesses by Bible study and baptism (R. 60–61, 38, 15–16); that petitioner had never been arrested and been belligerent, but had only been issued a ticket for running a stop sign (R. 60, 68–69, 37, 18); and that petitioner did not tell the hearing officer that he was not against noncombatant military service, but stated that he was conscientiously opposed to all military service (R. 61, 38, 20–21). Petitioner testified that, at the end of the hearing, the hearing officer stated that he would rule

in petitioner's favor and recommend a conscientious objector's classification (R. 62).

Petitioner had served a subpoena on the hearing officer calling for production of the hearing officer's longhand notes regarding the hearing and the hearing officer's report to the Department of Justice which was referred to in the letter from the Department to the appeal board (R. 47–48). Before the court ruled on the validity of that demand, the hearing officer testified as a defense witness. He said that he did not use the F. B. I. report at the hearing, but did read it over prior to the hearing and compared it with the résumé, which he did use. He stated that the F. B. I. report was about three or four times more voluminous than the résumé (R. 50–51). The request for production of the notes and report, as well as for the full F. B. I. file, was denied (R. 52–56, 80–82).

The hearing officer, called by the Government in rebuttal, denied that he had told petitioner he would sustain his claim as a conscientious objector, and denied petitioner's testimony that no questions had been asked concerning the Bible (R. 83). On cross-examination concerning the issue of the questioning on the Bible, the hearing officer stated that his notes contained a memorandum about the question on the Bible (R. 84). A renewed demand for production of the notes was denied (R. 84–86).

ARGUMENT

1. Petitioner's contention that the denial of a conscientious objector classification by the appeal board was without basis in fact, so that the final I–A (avail-

able for military service) classification was arbitrary and capricious (Pet. 16–18), disregards the narrow scope of review given to an appellate court for overturning the Selective Service System's refusal to grant conscientious objector status. Courts are not empowered to substitute their judgment on the weight of the evidence for those of the administrative boards. The classification can be overturned only if it has "no basis in fact." *Estep* v. *United States,* 327 U. S. 114, 122; *Witmer* v. *United States,* 348 U. S. 375, 380–381.

There was ample basis in fact for denial of petitioner's claim. The hearing officer found that petitioner was evasive and that his testimony regarding his drinking habits, previous traffic arrests, and the requisites for becoming a Jehovah's Witness was vacillating (R. 129). There were reports that petitioner was not an active member of Jehovah's Witnesses, reports which petitioner's lack of knowledge as to requisites of membership tended to confirm. Issues of sincerity must, to a large extent, depend on impressions of the applicant in person. Here, both the draft board before which petitioner personally appeared (see R. 92–93) and the hearing officer reached the conclusion that petitioner was not sincere.

The basis in fact for petitioner's I–A classification was not eliminated, as he suggests (Pet. 22–25), by reference in the F. B. I. résumés to his uncle's conviction as a bootlegger and to petitioner's living near women of immoral character. The résumés merely mentioned these incidents as parts of peti-

tioner's environmental background, and did not purport to make them conclusive or even significant as to the sincerity of his conscientious objector claim. In the language of the court below, these occurrences did probe petitioner's "subjective sincerity." (Pet. 45). The recommendation by the Department of Justice against petitioner's claim for exemption (R. 128–131) did not mention these incidents as being in any way determinative. Instead, the conclusion of lack of sincerity was based upon a composite of all information in the résumés and an appraisal of the general appearance and conduct of petitioner before the hearing officer.

2. There is no merit to petitioner's contention that the Department of Justice recommendation on the second appeal recommended denial of a conscientious objector classification upon the basis of an illegal ground (*i. e.*, belief in theocratic warfare), contrary to the holding in *Sicurella* v. *United States*, 348 U. S. 385 (Pet. 18–20).

On petitioner's first appeal, the Department of Justice based its recommendation against a I–O classification to a great extent upon petitioner's theocratic warfare belief (R. 98–99). After *Sicurella* was decided, petitioner's original prosecution was dropped and a second round of classification proceedings was commenced *de novo* (R. 92). The error tainting the record up to the time of the reopening of the classification was then no longer present.

In the Department of Justice recommendation on the second appeal, unlike the first recommendation, be-

lief in theocratic warfare was not assigned as a reason for denial of the conscientious objector claim. It is true that it was mentioned in passing (R. 129–130) as part of petitioner's general background; but there is no statement, express or implied, recommending that the appeal board consider such belief as a ground for denial of the conscientious objector classification. It is a fair inference that the appeal board members were aware, after the *Sicurella* decision, that petitioner's willingness to fight in theocratic warfare could not be, and was not, considered a reason for denial of a conscientious objector classification.

3. Petitioner contends (Pet. 20–22) that he was denied procedural due process when not permitted to inspect the complete F. B. I. report regarding his conscientious objector claim prior to or at the administrative hearing, so that it could be compared with the résumé to ascertain if any favorable evidence had been omitted. The contention is foreclosed by this Court's opinion in *United States* v. *Nugent*, 346 U. S. 1. This Court there held (at p. 6):

> We think the Department of Justice satisfies its duties under § 6 (j) when it accords a fair opportunity to the registrant to speak his piece before an impartial hearing officer; when it permits him to produce all relevant evidence in his own behalf and at the same time supplies him with a fair résumé of any adverse evidence in the investigator's report.

Similarly, in *Simmons* v. *United States*, 348 U. S. 397, this Court reaffirmed *Nugent* while recognizing a reg-

istrant's right to a fair résumé of all adverse information in the F. B. I. report in order that he might explain, rebut, or detract from the damaging force of the adverse evidence.

No element of fair play was denied petitioner as a result of refusal to produce the full F. B. I. report. Petitioner complains that favorable evidence was omitted from the résumé,[2] but even now he does not specify what this evidence was, or how it would have authorized the desired conscientious objector classification. The résumé did contain information which was favorable as well as unfavorable (Statement, *supra,* pp. 9–10). Petitioner himself knew better than any other person what evidence would prove favorable to his purpose. He had ample opportunity of presenting any such evidence to the hearing officer and to the appeal board before its final ruling. Instead of suggesting favorable evidence, in his letter to hearing officer Evenson (R. 124–125), he confined himself to answering derogatory information in the two résumés. And, after receiving the Department of Justice recommendation to which he was invited to reply (cf. *Gonzales* v. *United States,* 348 U. S. 407), petitioner merely wrote the appeal board: "I hereby

[2] Although the hearing officer testified that the F. B. I. report was about three or four times more voluminous than the résumé, it does not necessarily follow that favorable evidence was omitted. The hearing officer, in accounting for the smaller size of the résumé, explained that in it the names and addresses of witnesses were omitted, and that in the full F. B. I. report there were individual sheets for each agent's investigation of individual witnesses (R. 51).

request that my letters and files be considered by the appeal Board at the next meeting" (R. 133, 134).[3]

4. Petitioner's reliance upon *Jencks* v. *United States*, 353 U. S. 657, as in effect overruling, or at least devitalizing, the force of *Nugent* to render the full F. B. I. report subject to compulsory production at petitioner's trial, is misplaced. The ruling in *Jencks* is that reports by a Government witness as to matters to which he has testified on the stand must be produced to the defense for purposes of impeachment. Such reports perform a vastly different function than F. B. I. reports in conscientious objector cases. The recommendation of the Department of Justice, which is in itself merely advisory to the draft board, cannot be deemed the equivalent of the testimony of a prosecution witness. The recommendation represents a conclusion of the hearing officer, based not alone on the F. B. I. reports, but on those reports in relation to the whole hearing, and particularly in relation to the testimony of the registrant, who is told of and given an opportunity to rebut the material in the

[3] Petitioner asserts (Pet. 22) that the ruling of the court below conflicts with *Communist Party of the United States* v. *Subversive Activities Control Board* (C. A. D. C., No. 11,850, decided January 9, 1958), holding that the rule in *Jencks* v. *United States*, 353 U. S. 657, applies to an administrative proceeding before the Subversive Activities Control Board. However, even apart from the significant differences between that agency and the Selective Service System, the *Communist Party* case required production of reports to the F. B. I. by a particular witness (Mrs. Markward) who had testified in the Government's case before the Board; here, petitioner seeks a complete F. B. I. file for a roving inspection, which plainly is not authorized by *Jencks*.

reports. The only question before the trial court to which the recommendation relates is whether there was basis in fact for the classification made by the Selective Service Board. Reports which are never produced to the Selective Service Board cannot show that the Board acted arbitrarily. If, therefore, the reports need not be produced at the hearing, there is no reason why they should be produced at the trial. Moreover, to produce them at the trial would result in the very type of unlimited, unspecific "fishing expedition" which the *Jencks* decision explicitly stated it was not sanctioning.

There is no conflict of circuits on this issue. The ruling of the court below is in accord with that of the carefully considered opinion of the Fourth Circuit in *Blalock* v. *United States,* 247 F. 2d 615, also decided after *Jencks.* As that decision and the decision below point out, the impact of the *Nugent* holding cannot be avoided by presenting the claim for production of the F. B. I. reports in the form of a need to check the fairness of the résumé, at least not in a case such as this, where nothing has been shown as furnishing a basis for any claim that the résumé was unfair.

5. Petitioner also attacks the ruling of the District Court in refusing to order production of the hearing officer's longhand notes and the hearing officer's report to the Department of Justice. At the trial, the hearing officer was called by the Government as a rebuttal witness and was asked whether he had in fact questioned petitioner about the Bible. This was prompted by petitioner's testimony (con-

trary to the Department's letter to the draft board) that the hearing officer had not done so. The notes and report, therefore, did have a bearing on credibility, and the comments of the court appear to indicate that, had the *Jencks* decision been handed down by the time of the trial, the court would have ordered their production (see R. 84–86).

Nevertheless, we believe that the court below was correct in holding that production was not required. The notes are not the type of statement to which the *Jencks* opinion related. Nor are they a statement by the witness as defined in 18 U. S. C. 3500 (e), the recently enacted statute (Pet. 51–53) permitting production in certain circumstances; this statute defines statement as "a written statement made by said witness and signed or otherwise adopted or approved by him * * *." As the court below pointed out (Pet. 44), the notes here were "a personal aid to one performing a quasi-judicial function and totally uncommunicated" and "the prosecution had neither knowledge of nor control of the hearing officer's notes." Compare *Goldman* v. *United States,* 316 U. S. 129, 132. Similarly, the hearing officer's report was an interdepartmental report by "one performing a quasi-judicial function" (Pet. 44). Cf. *United States* v. *Jones,* 142 F. Supp. 806, 820–821 (E. D. S. C.), affirmed, 241 F. 2d 704 (C. A. 4). The hearing officer can scarcely be likened to the kind of partisan, accusatory informants involved in *Jencks.* Moreover, the testimony of the informants involved in *Jencks* was "crucial * * * to the Government's case" (353 U. S. at 667); here, on the other hand,

the hearing officer was called by the Government only as a rebuttal witness on what essentially was a collateral issue—*i. e.*, whether the hearing officer had questioned petitioner about the Bible.[4]

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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Solicitor General.

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Assistant Attorney General.

BEATRICE ROSENBERG,
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Attorneys.

MARCH 1958.

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[4] There is no holding (see Pet. 27) in *United States* v. *Erikson*, 149 F. Supp. 576 (S. D. N. Y.), that a registrant may compel production at his trial of a transcript of the testimony before the hearing officer. In that case, the transcript had been marked Government's Exhibit 4 (149 F. Supp. at 578), and apparently had been produced voluntarily. There is no requirement in the statute or regulations that a stenographic record of the hearing be made part of the administrative record. *United States* v. *Stasevic*, 117 F. Supp. 371, 375 (S. D. N. Y.)

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OCTOBER TERM, 1957

No. 804

JIMMY JAMES BOUZIDEN, Petitioner

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITION FOR REHEARING

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Supreme Court of the United States

OCTOBER TERM, 1957

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JIMMY JAMES BOUZIDEN, Petitioner

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UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITION FOR REHEARING

MAY IT PLEASE THE COURT:

Now comes the petitioner and requests a rehearing of the decision of the Court denying writ of certiorari in this case on April 7, 1958, because:

I.

This petition is filed pursuant to Rule 58(1) and (2) of the Rules of this Court and the time expires for filing it on May 2, 1958. The petition is filed in time. A substantial ground is available to petitioner not previously presented

that should justify granting the writ as held by this Court in *Schriber-Schroth Co.* v. *Cleveland Trust Co.*, 305 U. S. 47, 50 (1938).

II.

The court below held that it was necessary to show that the longhand notes and the typewritten reports of the hearing, being the official records of the hearing officer as to what took place at petitioner's hearing, were of value for impeachment of the officer as a witness for the Government before error of exclusion is shown. See the opinion at page 44 of the petition for the writ in this case. This holding is in direct conflict with *Scales* v. *United States,* 227 F. 2d 581, 592 (4th Cir. 1955), rev'd on other grounds, 355 U. S. 1 (1957); *United States* v. *Lebron,* 222 F. 2d 531, 536 (2d Cir. 1955); *Shelton* v. *United States,* 205 F. 2d 806 (5th Cir.), cert. dismissed, 346 U. S. 892 (1953); *United States* v. *Simonds,* 148 F. 2d 177 (2d Cir. 1945); *United States* v. *Ebeling,* 146 F. 2d 254 (2d Cir. 1944); *United States* v. *Rosenberg* 146 F. Supp. 555, 561-562 (E.D. Pa. 1956), rev'd on other grounds, 245 F. 2d 870 (3d Cir. 1957); *United States* v. *Mesarosh,* 116 F. Supp. 345, 349-350 (W.D. Pa. 1953), rev'd on other grounds, 352 U. S. 1 (1956) (dictum); *United States* v. *Schneiderman,* 106 F. Supp. 731 (S.D. Cal. 1952). These cases were not heretofore called to the attention of the Court.

It seems that this Court inadvertently overlooked that this holding is out of harmony with *Jencks* v. *United States,* 353 U. S. 657 (1957) at pages 667-669. Please consider again what is stated in the petition at pages 14-15, 25-28. The hearing officer, as the chief witness for the Government, contradicted the testimony of petitioner and his witness. [R. 82-83] The longhand notes of the hearing officer and the typewritten report were then demanded for the same purpose that the F.B.I. reports were sought in the case of *Jencks* v. *United States,* 353 U. S. 657 (1957). [R. 83-85] They were excluded from the evidence. [R. 85-86]

WHEREFORE, for the reasons above stated this Court should grant a rehearing, set aside the decision of April 7, 1958, denying the petition and granting the writ of certiorari as prayed for in the petition.

Respectfully submitted,

HAYDEN C. COVINGTON

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Brooklyn 1, New York

Counsel for Petitioner

May, 1958.

CERTIFICATE

I, the undersigned counsel for petitioner, do hereby certify that the foregoing petition for rehearing is prepared and filed in good faith. It is made so that justice may be done, and not for the purpose of delay.

HAYDEN C. COVINGTON

Counsel for Petitioner